

EXHIBIT 1

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS
DALLAS DIVISION

FEDERAL TRADE COMMISSION, : Civil Action
Plaintiff, : Case No. 3:19-cv-02281-K
vs. :
MATCH GROUP, INC., a corporation, :
MATCH GROUP, LLC, formerly
MATCH.COM, LLC, a Limited :
Liability Company,
:
Defendant.
_____ /

Deposition of BIKRAM BANDY, taken on behalf of
Defendant, by Chad Hummel, of Sidley Austin, LLP, at 1501 K
Street, NW, Washington, D.C., commencing at 10:09 a.m., on
October 24, 2022, before Linda C. Marshall, RPR.

APPEARANCES:

FOR THE PLAINTIFF: M. HASAN AIJAZ, Esquire
Federal Trade Commission

FOR THE DEFENDANT: CHAD HUMMEL, Esquire
Sidley Austin, LLP

<p>1 I-N-D-E-X</p> <p>2 Witness</p> <p>3 Page</p> <p>4 Bikram Bandy</p> <p>5 Examination by Mr. Hummel 4</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Exhibit 1 Notice of Deposition 9</p> <p>10 Exhibit 2 Plaintiff Initial Disclosure 46</p> <p>11 Exhibit 3 First Amended Complaint 73</p> <p>12 Exhibit 4 Responses to MGI Interrogatories 88</p> <p>13 Exhibit 5 Enforcement Policy Statement 113</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 2</p>	<p>1 Group, Inc. and Match Group, LLC.</p> <p>2 MS. TECKMAN: Jeanette Teckman, in-house counsel for</p> <p>3 Match Group, LLC.</p> <p>4 MS. BRAGG: Taylor Bragg, Sidley Austin, LLC on behalf</p> <p>5 of Match Group, Inc. and Match Group, LLC.</p> <p>6 MR. KITCHENS: And Samuel Kitchens, in-house counsel</p> <p>7 at Match Group, LLC.</p> <p>8 MR. AIJAZ: Hasan Aijaz representing the Federal Trade</p> <p>9 Commission.</p> <p>10 MR. TEPFER: Reid Tepfer with FTC.</p> <p>11 THE VIDEOGRAPHER: Is that everyone?</p> <p>12 Will the court reporter please swear in the witness?</p> <p>13 BIKRAM BANDY,</p> <p>14 having been first duly sworn, was examined and testified as</p> <p>15 follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. HUMMEL:</p> <p>18 Q Good morning. My name is Chad Hummel. As I just said, I</p> <p>19 represent the defendants in this case, which has been filed by</p> <p>20 the Federal Trade Commission against Match Group, Inc. and Match</p> <p>21 Group, LLC. The case is pending in the Northern District of</p> <p>22 Texas, Dallas division.</p> <p>23 Will you please state your full name for the record?</p> <p>24 A Bikram Bandy.</p> <p>25 Q Mr. Bandy, you are the chief litigation counsel for the</p> <p style="text-align: right;">Page 4</p>
<p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 THE VIDEOGRAPHER: Good morning. We're going on the</p> <p>3 record at 10:09 a.m. on October 24, 2022. Please note that the</p> <p>4 microphones are sensitive and can pick up private conversations.</p> <p>5 Please mute your phones at this time. Audio and video recording</p> <p>6 will continue to take place unless both parties agree to go off</p> <p>7 the record.</p> <p>8 This is media unit one of the video recorded</p> <p>9 deposition of Bikram Bandy taken by counsel for the defendant in</p> <p>10 the matter of Federal Trade Commission versus Match Group, Inc.,</p> <p>11 et al. filed in the United States District Court for the</p> <p>12 Northern District of Texas, Case Number 3:19-CV-02281-K.</p> <p>13 Location of this deposition is Sidley Austin, 1501 K Street</p> <p>14 Northwest, Suite 600, Washington, D.C.</p> <p>15 My name is Gene Aronov representing Veritext and I am</p> <p>16 the videographer. The court reporter is Linda Marshall from the</p> <p>17 firm Veritext. I'm not authorized to administer an oath. I'm</p> <p>18 not related to any party in this session nor am I financially</p> <p>19 interested in the outcome.</p> <p>20 If there are any objections to proceeding, please</p> <p>21 state them at the time of your appearance.</p> <p>22 Counsel and all present, including remotely, you may</p> <p>23 now state your appearances and affiliations for the record.</p> <p>24 MR. HUMMEL: Good morning. My name is Chad Hummel,</p> <p>25 law firm Sidley Austin. I represent the defendants, Match</p> <p style="text-align: right;">Page 3</p>	<p>1 FTC's Bureau of Consumer Protection. Is that correct?</p> <p>2 A That is correct.</p> <p>3 Q And you've held that position for approximately four years?</p> <p>4 A Yes.</p> <p>5 Q You're a lawyer?</p> <p>6 A I am.</p> <p>7 Q Where are you admitted to practice?</p> <p>8 A District of Columbia.</p> <p>9 Q In your role, you advise the Bureau of Consumer Protection</p> <p>10 director on complex litigation matters, true?</p> <p>11 A Among other things, yes.</p> <p>12 Q And you provide legal, strategic and tactical advice to</p> <p>13 case teams who are investigating and litigating consumer</p> <p>14 protection matters, correct?</p> <p>15 A Yes.</p> <p>16 Q And your job also includes providing guidance on</p> <p>17 e-discovery and ESI issues, right?</p> <p>18 A Yes.</p> <p>19 Q And you assist case teams in preparing for hearings and</p> <p>20 trials and advise on appeals that arise from the FTC's Consumer</p> <p>21 Protection cases, true?</p> <p>22 A That is true.</p> <p>23 Q And you're responsible for developing training materials</p> <p>24 and programs for bureau attorneys and investigators, correct?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 5</p>

<p>1 Q And currently you serve as head of the bureau's -- that's</p> <p>2 the FTC's Bureau of Consumer Protection -- the bureau's</p> <p>3 litigation committee, true?</p> <p>4 A The litigation committee has not been very active lately</p> <p>5 and so, I guess, technically true. But, yeah, we have -- the</p> <p>6 litigation committee has not been. But I am head of the</p> <p>7 litigation committee. I suppose that's true.</p> <p>8 Q Okay. And you also manage special projects relating to the</p> <p>9 bureau's investigation and litigation matters, correct?</p> <p>10 A Yes, that's right.</p> <p>11 Q Okay. As an attorney representing the FTC, you owe a duty</p> <p>12 of loyalty to the FTC. Is that true?</p> <p>13 A Yes.</p> <p>14 Q And you owe a duty of zealous advocacy to the FTC, correct?</p> <p>15 A When I am representing the FTC, of course.</p> <p>16 Q In your position here today, you're not representing the</p> <p>17 FTC. Is that true?</p> <p>18 A I have been designated as a representative under Rule</p> <p>19 30(b)6. So, whatever the legal implications of that are, that</p> <p>20 is what it is. I don't -- that, that's -- I'm here today as the</p> <p>21 corporate designee for the Federal Trade Commission.</p> <p>22 Q That I understand. But even as a corporate designee,</p> <p>23 you're still a lawyer representing the FTC. And in that</p> <p>24 capacity, you owe the FTC a duty of loyalty, correct?</p> <p>25 A I am not counsel for the FTC in this -- in its action</p> <p style="text-align: right;">Page 6</p>	<p>1 Q Who was the director to whom you reported at that time?</p> <p>2 A It was mostly Jessica Rich. For a period of time, it would</p> <p>3 have been Reilly Dolan and for a period of time it was Tom Pahl.</p> <p>4 Q To whom do you currently report?</p> <p>5 A The bureau director.</p> <p>6 Q And who is that now?</p> <p>7 A Samuel Levine.</p> <p>8 Q Have you spoken with Mr. Levine about your testimony here</p> <p>9 today?</p> <p>10 A No.</p> <p>11 Q You were, at some point, the coordinator of the FTC's Do</p> <p>12 Not Call program, correct?</p> <p>13 A Yes.</p> <p>14 Q And prior to your joining the FTC -- well, strike that.</p> <p>15 How many years have you been with the FTC? About ten, roughly?</p> <p>16 A Yes, it was ten years in April of this year.</p> <p>17 Q And before that, you were a partner at McKenna Long and</p> <p>18 Aldridge, right?</p> <p>19 A Correct.</p> <p>20 Q And you were a litigator there?</p> <p>21 A Yes, I was a litigation partner. Before that, a litigation</p> <p>22 associate.</p> <p>23 Q And you attended GW University Law School?</p> <p>24 A I did.</p> <p>25 Q You went to Duke undergrad?</p> <p style="text-align: right;">Page 8</p>
<p>1 against Match Group, Inc. and Match Group, LLC.</p> <p>2 Q Prior to the time that you were chief litigation counsel</p> <p>3 for the FTC's Bureau of Consumer Protection, you were a senior</p> <p>4 staff attorney?</p> <p>5 A That's true.</p> <p>6 Q And you worked in the Washington, D.C. FTC offices when you</p> <p>7 held that title, correct?</p> <p>8 A Can you repeat your question?</p> <p>9 Q Sure. And you worked in Washington, D.C. in the main</p> <p>10 office of the FTC when you were a senior staff attorney?</p> <p>11 A Yes.</p> <p>12 Q All right. And you were a senior staff attorney in the</p> <p>13 Division of Marketing Practices, correct?</p> <p>14 A That's right.</p> <p>15 Q And at that time, you worked on investigations and</p> <p>16 litigation relating to consumer fraud, right?</p> <p>17 A Yes.</p> <p>18 Q Telemarketing fraud, correct?</p> <p>19 A Yes.</p> <p>20 Q And business opportunity scams, is that correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. Prior to the time that you were a senior staff</p> <p>23 attorney, you were counsel to the director of the Bureau of</p> <p>24 Consumer Protection, correct?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 7</p>	<p>1 A That's correct.</p> <p>2 Q And your undergraduate degree was in 1995. Is that right?</p> <p>3 A That's right.</p> <p>4 (Deposition Exhibit No. 1, marked for identification.)</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q All right. Let's look at what I've marked as Exhibit 1.</p> <p>7 Exhibit 1 is the Notice of Deposition of plaintiff Federal Trade</p> <p>8 Commission served in this case in September 2022. I take it</p> <p>9 you're familiar with this document?</p> <p>10 A I have reviewed it. I've seen it before, yes.</p> <p>11 Q And you're designated to be the FTC's Rule 30(b)6 designee</p> <p>12 on topics one, two and three, correct?</p> <p>13 A Yes.</p> <p>14 Q And the first topic reads, any and all facts in evidence</p> <p>15 supporting the FTC's allegation that Match.com does not have,</p> <p>16 quote, simple mechanisms for a consumer to stop recurring</p> <p>17 charges from being placed on the consumer's credit card, debit</p> <p>18 card, bank account or other financial account as alleged in the</p> <p>19 FTC's complaint. You're designated to testify on that topic?</p> <p>20 A Yes.</p> <p>21 Q You understand that the FTC has alleged that the Match.com</p> <p>22 cancellation mechanism is not simple. The online cancellation</p> <p>23 mechanism is not simple, correct?</p> <p>24 MR. AIJAZ: Objection, misstates the facts.</p> <p>25 THE WITNESS: Can you repeat your question?</p> <p style="text-align: right;">Page 9</p>

<p>1 BY MR. HUMMEL:</p> <p>2 Q Sure. You understand, do you not, that the allegation in</p> <p>3 this case, one of the allegations, particularly in Count Five of</p> <p>4 the complaint, is that the Match.com online cancelation</p> <p>5 mechanism is not simple and therefore violates ROSCA?</p> <p>6 A Yes.</p> <p>7 Q All right. And you're aware, are you not, that Match.com</p> <p>8 offers multiple other means for consumers to cancel their</p> <p>9 recurring charges?</p> <p>10 A No.</p> <p>11 Q You don't know whether or not Match.com offers email</p> <p>12 cancelation?</p> <p>13 A I wouldn't say they offer it. It exists, but it's not</p> <p>14 offered.</p> <p>15 Q Okay. What's your definition of offered?</p> <p>16 A Offered, I would say -- to me, offered means, like, it's</p> <p>17 advertised or people know about it, that there are -- people are</p> <p>18 told. Does an email cancelation mechanism exist? Yes, it</p> <p>19 exists.</p> <p>20 Q And subscribers to Match.com can also cancel via online</p> <p>21 chat, correct?</p> <p>22 A They can, yes.</p> <p>23 Q And they can also cancel by telephone. In other words,</p> <p>24 they can call up a care representative and cancel their</p> <p>25 subscription in that way, correct?</p> <p style="text-align: right;">Page 10</p>	<p>1 BY MR. HUMMEL:</p> <p>2 Q When was the first meeting?</p> <p>3 A I don't remember the exact date.</p> <p>4 Q Proximate?</p> <p>5 A It was this month. Oh, no. Strike that.</p> <p>6 Maybe it was late September or early October. I don't</p> <p>7 remember the exact date.</p> <p>8 Q Was it in person or on Zoom?</p> <p>9 A It was via Zoom.</p> <p>10 Q Were all the prep sessions via Zoom?</p> <p>11 A Yes.</p> <p>12 Q Were they recorded?</p> <p>13 A No.</p> <p>14 Q And you said there were six separate meetings. When was</p> <p>15 the last meeting in preparation for your deposition here today?</p> <p>16 A Saturday.</p> <p>17 Q In D.C.?</p> <p>18 A I was in D.C.</p> <p>19 Q The rest were via Zoom?</p> <p>20 A The other participants were via Zoom, yes.</p> <p>21 Q And this was all in connection with topic one. We're going</p> <p>22 to focus on the other topics later. But in connection with</p> <p>23 topic one, all the six meetings with these five separate FTC</p> <p>24 attorneys related to your preparation to testify about the facts</p> <p>25 and evidence supporting the allegation that Match.com does not</p> <p style="text-align: right;">Page 12</p>
<p>1 A It is my understanding that they can, yes.</p> <p>2 Q All right. Now, what did you do to prepare for your</p> <p>3 testimony here today on topic number one?</p> <p>4 A I had several meetings with the case team, the attorneys</p> <p>5 representing Match in this matter. I reviewed documents. I --</p> <p>6 yeah, that's, that's -- those are the two things I did.</p> <p>7 Q All right. Who on the case team did you meet with?</p> <p>8 A I met with counsel here today, Hasan Aijaz. I met with</p> <p>9 Reid Tepfer, Jason Moon, Sarah Zuckerman and also Brad Winter.</p> <p>10 Q Are these all lawyers of the FTC?</p> <p>11 A Yes.</p> <p>12 Q So, in preparation for your testimony, you met with five</p> <p>13 different FTC lawyers?</p> <p>14 A Not individually, but we had meetings.</p> <p>15 Q Okay. And how many meetings?</p> <p>16 A I think six.</p> <p>17 Q Six meetings. When was the first one?</p> <p>18 MR. AIJAZ: Objection to the extent this calls for</p> <p>19 privileged information.</p> <p>20 MR. HUMMEL: He's a 30(b)6 designee. There's no</p> <p>21 privilege if it's in preparation for a deposition.</p> <p>22 MR. AIJAZ: Just to the extent it calls for it. I'm</p> <p>23 just concerned about this line of questioning.</p> <p>24 So, of course, answer to the extent it doesn't violate</p> <p>25 attorney-client privilege.</p> <p style="text-align: right;">Page 11</p>	<p>1 have simple mechanisms to cancel?</p> <p>2 A That was a really long question. You're going to have to</p> <p>3 repeat that one.</p> <p>4 Q Okay. Were all of the the six meetings in preparation for</p> <p>5 your deposition here today that included five separate FTC</p> <p>6 lawyers, were they all -- did they all, in some respect, cover</p> <p>7 the topic number one, which is the allegation that Match.com</p> <p>8 does not have simple cancelation mechanisms?</p> <p>9 MR. AIJAZ: Objection, misstates the testimony.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. HUMMEL:</p> <p>12 Q Okay. How many of the meetings focused on topic one, if</p> <p>13 you remember?</p> <p>14 MR. AIJAZ: Objection, privilege.</p> <p>15 Don't answer.</p> <p>16 MR. HUMMEL: You're instructing him not to answer,</p> <p>17 yes?</p> <p>18 MR. AIJAZ: Yes.</p> <p>19 MR. HUMMEL: Okay. Basis, attorney-client privilege?</p> <p>20 MR. AIJAZ: Correct.</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q Okay. Now, did any of the meetings -- I take it, in all</p> <p>23 the meetings, you had discussions with these FTC lawyers,</p> <p>24 correct?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 13</p>

<p>1 Q And some of them related to topic one, correct?</p> <p>2 MR. AIJAZ: Again, objection, attorney-client</p> <p>3 privilege.</p> <p>4 Don't answer.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q Did you, in these meetings, learn facts and evidence from</p> <p>7 these lawyers that support the FTC's allegation that Match.com</p> <p>8 does not have simple cancelation mechanisms?</p> <p>9 MR. AIJAZ: Objection, attorney-client privilege and</p> <p>10 also relevancy as to the entire line of questioning.</p> <p>11 Don't answer.</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q Prior to the meetings with the FTC lawyers, did you know</p> <p>14 anything about Match.com's cancelation mechanisms?</p> <p>15 A Yes.</p> <p>16 Q How did you know that?</p> <p>17 A I had some discussions with the case team when the matter</p> <p>18 was, I think, at the time the matter was -- whether it was --</p> <p>19 when the bureau was deciding -- let me think of the timing.</p> <p>20 I can't remember whether it was when there were settlement</p> <p>21 negotiations going on or whether it was at the time the</p> <p>22 complaint package came to the bureau for approval. But I was</p> <p>23 familiar with the basic allegations in the complaint as my role</p> <p>24 in -- as chief litigation counsel.</p> <p>25 Q During that time, prior to the time that you were preparing</p> <p style="text-align: right;">Page 14</p>	<p>1 that made Match.com's online cancelation mechanism not simple?</p> <p>2 A You're asking for my memory?</p> <p>3 Q Yes.</p> <p>4 A I don't remember the specifics.</p> <p>5 Q Okay. So, as of today, what is it about Match.com's online</p> <p>6 cancelation flow or mechanism that renders it not simple?</p> <p>7 A Well, there's several things about it. Let's see if I can</p> <p>8 start by going through my memory of what the cancelation flow</p> <p>9 is. First, the cancelation flow is difficult to find. You have</p> <p>10 -- it's -- to get to it, you have to go to a gear, a little gear</p> <p>11 icon on the, I think, upper right corner of the Match.com home</p> <p>12 page. And you hover over the gear and then you get to the</p> <p>13 settings.</p> <p>14 And you click on settings and then it pulls up a menu,</p> <p>15 which, in the more recent iterations of the website, has a menu</p> <p>16 of options that include a bunch of other things. But one of</p> <p>17 them is "manage subscription", okay? There's nothing on the</p> <p>18 current settings page that says anything about cancelation. So,</p> <p>19 then you click on "manage subscription" and you're then prompted</p> <p>20 to input your password. And there is a Captcha and you do that.</p> <p>21 And I think, in the current iteration, you hit "continue". And</p> <p>22 then when you get that, you finally see a page that has the</p> <p>23 word -- there are two links on it. I think one is subscription</p> <p>24 status and the other is "cancel subscription".</p> <p>25 So, then you click on "cancel subscription" and then you</p> <p style="text-align: right;">Page 16</p>
<p>1 for this deposition, were you aware of why the FTC alleged that</p> <p>2 Match.com did not have simple cancelation mechanisms?</p> <p>3 MR. AIJAZ: Objection, vague.</p> <p>4 THE WITNESS: I was aware that there was issues with</p> <p>5 people having difficulty canceling, but not in deep in the</p> <p>6 details.</p> <p>7 BY MR. HUMMEL:</p> <p>8 Q What was the basis of your awareness?</p> <p>9 A I'm the chief litigation counsel, so I have -- I get</p> <p>10 information about all the matters that come into the bureau for</p> <p>11 approval. So, I had a general idea of what the case was about.</p> <p>12 Q So, you knew -- well, you were aware that some consumers</p> <p>13 had had trouble canceling. Is that the extent of your</p> <p>14 testimony?</p> <p>15 A I had a general understanding of what the complaint was</p> <p>16 about and that was in the complaint. So, yeah. And my main</p> <p>17 memory of that time was more about what was in Counts, I think,</p> <p>18 One and Two.</p> <p>19 Q Understood.</p> <p>20 A That's what I remember more, but the simple cancelation</p> <p>21 thing -- I mean, I can't remember what I remembered four years</p> <p>22 ago. But, you know, I would have had some general familiarity</p> <p>23 with the case and what was, what -- the conduct that was at</p> <p>24 issue.</p> <p>25 Q What was it at that time, to the best of your recollection,</p> <p style="text-align: right;">Page 15</p>	<p>1 get to a page where the title says "before you go". And then</p> <p>2 there's a survey underneath it. And if you click on, like,</p> <p>3 survey responses, it'll pop up another survey or sometimes two.</p> <p>4 And then there's a button at the bottom that says "continue</p> <p>5 cancelation". And you get to that and then you get to another</p> <p>6 page, which, in the current iteration says "tell us more". And</p> <p>7 there is a survey for, I think, would you recommend Match to a</p> <p>8 friend? And it has, like, buttons from, like, one to ten or</p> <p>9 zero to ten.</p> <p>10 Q Like an NPS?</p> <p>11 A I don't know what an NPS is.</p> <p>12 Q Net Promoter Score, you know? Okay.</p> <p>13 A It's a survey that goes from one to ten or zero to ten on</p> <p>14 how much you would recommend -- whether you'd recommend Match to</p> <p>15 a friend. And then I think you hit "continue cancelation" and</p> <p>16 then you get to "your subscription has been canceled".</p> <p>17 But I forgot one thing. I think for some users, they are</p> <p>18 presented with what I think Match employees called, like, a save</p> <p>19 offer page, where -- I think it appears -- I don't know whether</p> <p>20 it typically appears between the "before you go" page and the</p> <p>21 "tell us more" page or whether it typically appears after people</p> <p>22 hit "cancel subscription". But for some users, they get a save</p> <p>23 offer which, I think, typically offers, like, three months for</p> <p>24 the price of one. And so, consumers can accept that offer or</p> <p>25 they can -- at one point there was just, like, a little link</p> <p style="text-align: right;">Page 17</p>

<p>1 that said, no thanks, I want to resign.</p> <p>2 Then there was a -- then it would change to, like, a button</p> <p>3 that said "continue". I think the most recent, relatively</p> <p>4 recent change has been to change that to "continue cancelation".</p> <p>5 So, at some point in the process, I'm not -- I can't remember</p> <p>6 exactly where, that save offer is presented to some consumers.</p> <p>7 And then finally, you get through all that and you get to the</p> <p>8 "your subscription is canceled" page.</p> <p>9 There is some confirmation number that's provided there.</p> <p>10 There's a date that's provided on that page that says, you</p> <p>11 know -- I guess when you cancel a subscription, you can still</p> <p>12 use your subscription until the last day of the term that you</p> <p>13 purchased. So, that -- it says, you know, your subscription</p> <p>14 will cancel on whatever that day is. You have X number of days,</p> <p>15 you know, before that happens. So, it's essentially indicating</p> <p>16 that you still have a subscription, but it's not going to</p> <p>17 auto-renew.</p> <p>18 And then there are buttons there at the bottom. I think</p> <p>19 one is to, like, hide or deactivate profile. So, you can go</p> <p>20 there. I didn't dig too much into what happens with that. And</p> <p>21 I think the other button is "back to home", I think it's what it</p> <p>22 says now. Yeah, "back to home", I think is what it says. But</p> <p>23 in terms of what's -- it's hard to find. On the account</p> <p>24 settings page, it doesn't say cancel.</p> <p>25 You get to the password page and, you know, a lot of users</p> <p style="text-align: right;">Page 18</p>	<p>1 it -- the link to "no thanks, I want to resign". Like, the</p> <p>2 resign language is not a term that's used anywhere else in the</p> <p>3 flow. It was far less prominent than the button that you would</p> <p>4 click, that you would use to accept the offer. Then when they</p> <p>5 changed it to "continue", it was even more confusing because</p> <p>6 with the save offer there, you would -- consumers would look at</p> <p>7 that page and wonder if you hit "continue", does that mean I</p> <p>8 continue to accept the save offer? Or if the other button says,</p> <p>9 "accept the save offer"? Very confusing.</p> <p>10 And then you sort of get the nags with the two, the</p> <p>11 back-to-back-to-back surveys. You've got the survey. You click</p> <p>12 on a button. More questions come. Then maybe more questions</p> <p>13 come. Then you get that done and you have to take another --</p> <p>14 you know, you're asked to fill out another survey. In earlier</p> <p>15 iteration of the website, there was a text box. I can't</p> <p>16 remember -- the question was, tell us how we can make finding</p> <p>17 love easier, I think, was a text box. So, that was there.</p> <p>18 You know, these surveys were unnecessary, according to</p> <p>19 Match employees. They noted that the survey information wasn't</p> <p>20 particularly helpful or useful, but they were there. There were</p> <p>21 complaints from the care team saying the process is too</p> <p>22 complicated. It's -- you know, it needs to be simplified.</p> <p>23 There were requests to move the survey to after when cancelation</p> <p>24 was complete, but others in Match rejected that. There were</p> <p>25 requests to eliminate the password requirement. That was</p> <p style="text-align: right;">Page 20</p>
<p>1 abandon at the password page. Because, to use Match, it is my</p> <p>2 understanding that typically consumers don't have to input their</p> <p>3 Match password. So, it's not something that a lot of users of</p> <p>4 Match use a lot, so a lot of them forget. So, you can't get --</p> <p>5 so, a lot -- I saw an email saying that consumers, because of</p> <p>6 that, would have to go to "forget password" flow. There's a</p> <p>7 link on that page, "forget password". And so they go through</p> <p>8 that flow. That flow, according to Match employees, was bad.</p> <p>9 And if you get through the password page, you go to hit</p> <p>10 "cancel", but it all -- you have all the save offer, the two</p> <p>11 pages of surveys before you can get to the cancelation. So,</p> <p>12 that's time-consuming. And I think one employee referred to</p> <p>13 them as nag screens. It's nagging.</p> <p>14 And then you've got the confusing verbiage. Like,</p> <p>15 consumers click on "cancel your subscription" and they see a</p> <p>16 page that's titled "before you go". So, consumers and</p> <p>17 complaints bear this out, think that by clicking "cancel</p> <p>18 subscription", they have canceled their subscription and that</p> <p>19 the company is just asking for a survey before they leave Match.</p> <p>20 And so, so that -- the confusing verbiage makes it not simple.</p> <p>21 And this is something that Match employees also noted, that the</p> <p>22 verbiage is confusing and makes consumers think they've actually</p> <p>23 canceled when they haven't.</p> <p>24 The save offer was confusing, especially in the prior</p> <p>25 iterations because -- the save offer was not simple because</p> <p style="text-align: right;">Page 19</p>	<p>1 rejected. So, yeah, that's why the -- that's what I have on why</p> <p>2 the cancelation flow was not simple.</p> <p>3 Q Is whether or not a cancelation flow simple, online</p> <p>4 cancelation flow simple, an objective test or is it subjective?</p> <p>5 MR. AIJAZ: Objection, calls for a legal conclusion.</p> <p>6 THE WITNESS: Objective.</p> <p>7 BY MR. HUMMEL:</p> <p>8 Q So, if it's objective, what's too many clicks required to</p> <p>9 cancel? What's the number?</p> <p>10 A I don't think it's -- just because it's objective doesn't</p> <p>11 mean that it's based on a number of clicks.</p> <p>12 Q I understand, but can you answer my question? Is there</p> <p>13 such a thing as too many clicks?</p> <p>14 A Yes.</p> <p>15 Q Okay. What's the number? What's too many clicks?</p> <p>16 A Depends on the circumstances.</p> <p>17 Q Okay. So, you can't give a number.</p> <p>18 MR. AIJAZ: Objection, asked and answered.</p> <p>19 THE WITNESS: It depends on the circumstance.</p> <p>20 BY MR. HUMMEL:</p> <p>21 Q Okay. So, in some circumstances, would two be too many</p> <p>22 clicks?</p> <p>23 A I don't know. I'd have to see that survey. That's a</p> <p>24 hypothetical question.</p> <p>25 Q It's actually not. It's objective. But the question is,</p> <p style="text-align: right;">Page 21</p>

<p>1 is six too many?</p> <p>2 A I don't know.</p> <p>3 Q Nine too many?</p> <p>4 A I don't know. Depends on the circumstances.</p> <p>5 Q All right. And what about time to completion? What's too</p> <p>6 long to cancel an online subscription?</p> <p>7 A It depends.</p> <p>8 Q Okay. Is a minute too long?</p> <p>9 A Could be.</p> <p>10 Q Is two minutes too long?</p> <p>11 A Could be.</p> <p>12 Q But there's no objective standard that the FTC uses to</p> <p>13 measure time of completion?</p> <p>14 A I think you look at -- whether a mechanism is simple is</p> <p>15 dependent on facts and circumstances of the mechanism that</p> <p>16 you're analyzing.</p> <p>17 Q Is it a performance test, like clear and conspicuous?</p> <p>18 MR. AIJAZ: Objection, vague.</p> <p>19 THE WITNESS: I don't know what you mean by that.</p> <p>20 MR. HUMMEL: Sure you do. The FTC's Dot Com</p> <p>21 guidelines talk about the clear and conspicuous requirement for</p> <p>22 online disclosure.</p> <p>23 THE WITNESS: I'm familiar with that.</p> <p>24 BY MR. HUMMEL:</p> <p>25 Q Right. And it says that whether something is clear and</p> <p style="text-align: right;">Page 22</p>	<p>1 to the extent that expert disclosures are due November 4th, to</p> <p>2 the extent that your answer relies on the opinion of an expert.</p> <p>3 You can discuss that.</p> <p>4 MR. HUMMEL: Can or cannot?</p> <p>5 MR. AIJAZ: Can.</p> <p>6 THE WITNESS: I don't know whether the case team is</p> <p>7 planning to have expert testimony on that topic, but it was not</p> <p>8 part of my preparation. So, I'm -- my assumption is that it</p> <p>9 is -- whether they're going to do it or not, it hasn't been done</p> <p>10 yet.</p> <p>11 BY MR. HUMMEL:</p> <p>12 Q Got it. For sure, would you say that no heuristic analysis</p> <p>13 or empirical study or survey regarding the simplicity vel non of</p> <p>14 the Match.com flow was not done prior to filing the complaint?</p> <p>15 A Heuristic, vel non. I don't understand that question.</p> <p>16 Q Then I'll repeat it.</p> <p>17 A Can you simplify it?</p> <p>18 Q I'm not sure I can, but I'll try. Is it true that there</p> <p>19 was no empirical study done -- and empirical would include a</p> <p>20 heuristic analysis by a usability expert or a consumer survey or</p> <p>21 a consumer usability study. None of that was done, to your</p> <p>22 knowledge, prior to the filing of the complaint in this case?</p> <p>23 A I don't want to embarrass myself here, but I don't</p> <p>24 understand what the term heuristic means. So, can you use</p> <p>25 another word to describe that? My vocabulary is not as good as</p> <p style="text-align: right;">Page 24</p>
<p>1 conspicuous is a performance test. Are you familiar with that,</p> <p>2 with the guidelines?</p> <p>3 A I am not familiar with the term, performance test from the</p> <p>4 Dot Com guidelines. I didn't review them specifically for</p> <p>5 preparation of my testimony today.</p> <p>6 Q So, my question is -- it's an objective test and the number</p> <p>7 of clicks depends on the circumstances. The time to complete</p> <p>8 depends on the circumstances. How do you measure objectively</p> <p>9 whether something is simple or not?</p> <p>10 A I think it's -- would a reasonable consumer consider it to</p> <p>11 be simple? So, I think it's a reasonableness test.</p> <p>12 Q Okay. So, what empirical study has the FTC done to</p> <p>13 determine whether the Match.com online subscription flow is</p> <p>14 simple for the reasonable consumer?</p> <p>15 A I'm not sure whether we have or not.</p> <p>16 Q You don't know one way or the other?</p> <p>17 A It didn't come up in my preparation.</p> <p>18 Q All right. So, the topic calls for all facts and evidence.</p> <p>19 So, I assume if there was any empirical study that was designed</p> <p>20 to elicit or to determine whether a reasonable consumer could</p> <p>21 simply cancel their subscription, you would know about it.</p> <p>22 A What do you mean by empirical study?</p> <p>23 Q Survey. Usability study, heuristic analysis, anything like</p> <p>24 that.</p> <p>25 MR. AIJAZ: With that explanation, I'm going to object</p> <p style="text-align: right;">Page 23</p>	<p>1 yours, apparently.</p> <p>2 Q I don't believe that. But having said all that --</p> <p>3 A Yes.</p> <p>4 Q Heuristic analysis is, from a website usability</p> <p>5 standpoint -- and you guys challenge websites all the time,</p> <p>6 right? You've got 20 complaints I'm going to ask you about</p> <p>7 later in the case, later in the day. It's an expert in website</p> <p>8 usability and this expert knows industry standard mechanisms for</p> <p>9 triggering consumer behavior. Do you know if the FTC engaged or</p> <p>10 performed such analysis prior to filing the complaint?</p> <p>11 MR. AIJAZ: Same objection regarding the date for</p> <p>12 expert disclosures.</p> <p>13 MR. HUMMEL: This is before the filing of the</p> <p>14 complaint.</p> <p>15 Was any sort of analysis like that done, to your</p> <p>16 knowledge?</p> <p>17 THE WITNESS: I didn't --</p> <p>18 MR. HUMMEL: If you don't know, it's fine.</p> <p>19 THE WITNESS: No, I am trying to process your</p> <p>20 question. So, can you ask it again?</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q Was any sort of analysis regarding the usability of the</p> <p>23 Match.com cancelation flow done prior to filing the complaint?</p> <p>24 A I don't know.</p> <p>25 Q Okay. So, now, for -- another example that I'll give you</p> <p style="text-align: right;">Page 25</p>

<p>1 is, you said that the Match.com cancelation flow is difficult to 2 find. And you said that's because the consumer has to find a 3 gear, right? Do you remember that? 4 A I do remember that. 5 Q Well, on the Apple iPhone, settings is a gear. It's a 6 common industry convention to put settings and cancelation 7 subscription flows and all that sort of thing under a gear. Are 8 you aware of that? 9 MR. AIJAZ: Objection, assumes facts not in evidence, 10 compound and vague. 11 THE WITNESS: That didn't come up in my preparation. 12 BY MR. HUMMEL: 13 Q Okay. So, the FTC is not going to say -- well, strike 14 that. 15 Is the FTC going to contend in this case that the 16 Match.com cancelation flow is not simple in part because you 17 have to find it by clicking on a gear? That's how I heard your 18 testimony. 19 A It's difficult. It's not simple because it's difficult to 20 find. 21 Q Because it's under a gear? Is that what you said? 22 A The settings menu is not easy to find on the website 23 because it's -- you have to find the -- yeah, because you have 24 to hover over the gear. 25 Q Over the gear, same as you would on an iPhone --</p> <p style="text-align: right;">Page 26</p>	<p>1 BY MR. HUMMEL: 2 Q Other than communications with counsel and your review of 3 documents, are you relying on anything else in providing your 4 testimony here today as a 30(b)6 designee of the FTC? 5 A Not that I can recall. 6 Q And who provided the documents for you to review in 7 connection with your preparation? 8 MR. AIJAZ: Objection, attorney-client privilege. 9 Don't answer. 10 BY MR. HUMMEL: 11 Q Did the lawyers for the FTC select the documents that you 12 relied on in connection with formulating your testimony here 13 today? 14 MR. AIJAZ: Same objection, privileged. 15 Do not answer. It's attorney-client privilege. 16 BY MR. HUMMEL: 17 Q What documents did you review, if you recall? 18 A Sure, okay. So, I reviewed selected items from the docket 19 in this case. That would be the complaint, the Amended 20 Complaint. I reviewed the ruling on Match's motion to dismiss. 21 I reviewed the ruling on the motion for leave to amend. I 22 reviewed some exhibits to -- the motion to dismiss, the -- 23 Match's motion to dismiss the complaint. I reviewed some 24 exhibits to the opposition to the motion for leave to amend, 25 Match's opposition and some exhibits from the opposition to --</p> <p style="text-align: right;">Page 28</p>
<p>1 A I did not -- 2 Q Where literally billions of consumers hit their settings by 3 hitting a gear. 4 MR. AIJAZ: Objection, argument. 5 MR. HUMMEL: I'll withdraw it. 6 BY MR. HUMMEL: 7 Q All right. Let's see. Have you -- are you relying, in 8 giving this testimony today, that -- where you describe your 9 reasons or the FTC's reasons why the Match.com flow is not 10 simple, are you relying on what you were told by the FTC 11 lawyers? 12 MR. AIJAZ: Objection, attorney-client privilege. 13 That's -- 14 Do not answer. 15 MR. HUMMEL: It calls for a yes or no. It doesn't 16 call for the content of the communication. 17 BY MR. HUMMEL: 18 Q Are you relying on anything that was told to you by these 19 lawyers in connection with your description of why the FTC 20 contends Match.com's cancelation flow is not simple? 21 MR. AIJAZ: That's the same question. 22 Do not answer. 23 MR. HUMMEL: Basis? 24 MR. AIJAZ: Attorney-client privilege. 25 MR. HUMMEL: Okay.</p> <p style="text-align: right;">Page 27</p>	<p>1 from the FTC's reply in support of its motion for leave to 2 amend. I reviewed the verified stipulation that was filed in 3 this case by Match. I think that's everything from the docket 4 that I reviewed. 5 I reviewed discovery responses. I reviewed the FTC's 6 original, first and second amended responses to -- I can't 7 remember which party's interrogatories, but interrogatory 8 responses. Parts of them. I don't know that I read them cover 9 to cover, but I read some of their answers. I reviewed Match 10 Group, Inc. and Match Group, LLC's interrogatory responses to 11 the -- responses to the FTC's interrogatories. Some of them, 12 not cover to cover. I reviewed some of the documents that were 13 cited in the FTC's interrogatory responses for some of them. I 14 reviewed -- what other discovery did I review? I may have 15 reviewed some other discovery, but that's all I can remember. 16 Then I reviewed a lot of documents produced by Match in 17 this case. I reviewed a whole variety of versions of the 18 cancelation flow, both videos and screenshots. I reviewed 19 screenshots of the sign-up flow. I reviewed screenshots of the 20 FAQ's. I reviewed the terms of use. I reviewed -- there was 21 one video of cancel flow that I believe an FTC investigator 22 captured, which was the very recent one. I reviewed that. 23 I reviewed lots of emails, internal Match employee emails 24 and the attachments to those including -- I remember some 25 spreadsheets that had cancel flow abandon rate data on it. I</p> <p style="text-align: right;">Page 29</p>

<p>1 Q My question was, how was the 64,000 derived?</p> <p>2 MR. AIJAZ: Again, objection, relevancy to the</p> <p>3 superceding response if it has been superceded.</p> <p>4 THE WITNESS: Okay. I didn't delve too deeply into</p> <p>5 this, but it is my understanding that this is based on the 8.7</p> <p>6 million that we talked about in the initial disclosure, because</p> <p>7 if you multiply 64,000 times 136, it's 8.7 million. And it was</p> <p>8 based on data that calculated the average subscription cost. It</p> <p>9 divided the -- so, it split the 8.7 million into 5 million and</p> <p>10 3.7 million, 5 million being the un-refunded amounts from</p> <p>11 consumers who complained that they thought they had canceled and</p> <p>12 the 3.7 million was the time spent dealing with refunds.</p> <p>13 So, it takes the 5 million, divides that by the average</p> <p>14 subscription cost amount, which was, like, I want to say, \$78 or</p> <p>15 something that they derive from Match data. That gives you</p> <p>16 about 64,000 consumers. And then they took the</p> <p>17 64,000 consumers, divided the 3.7 million by that and that ends</p> <p>18 up being 50 some dollars. And you add the 78 to the 50 sum and</p> <p>19 that gives you the 136. So, in some sense it was -- those</p> <p>20 figures were reverse-engineered from the \$8.7 million figure we</p> <p>21 talked about earlier from the initial disclosure.</p> <p>22 BY MR. HUMMEL:</p> <p>23 Q The 64,000 harmed consumers and the \$136 of average harm</p> <p>24 per consumer were reverse-engineered from the 8.7 million?</p> <p>25 A That came from the original analysis I spoke about earlier</p> <p style="text-align: right;">Page 90</p>	<p>1 cancel but was unable to do so.</p> <p>2 Q Even though the flow didn't change?</p> <p>3 A The flow did change.</p> <p>4 Q Okay. So, every iteration of the flow would be a separate</p> <p>5 violation or every consumer that tried to cancel and couldn't?</p> <p>6 MR. AIJAZ: Objection, form.</p> <p>7 THE WITNESS: The latter.</p> <p>8 BY MR. HUMMEL:</p> <p>9 Q The latter. Is there any precedent for that, that you're</p> <p>10 aware of, that a court has imposed a judgment for every consumer</p> <p>11 who tried to cancel and couldn't using the same flow?</p> <p>12 MR. AIJAZ: Objection, outside the scope.</p> <p>13 THE WITNESS: It didn't come up in my preparation. I</p> <p>14 don't know one way or the other.</p> <p>15 BY MR. HUMMEL:</p> <p>16 Q All right. In your personal experience, ten years at the</p> <p>17 FTC, has there ever been a litigating decision where it's every</p> <p>18 consumer who tried to access a particular flow?</p> <p>19 A I don't know whether we have litigated decisions on that</p> <p>20 particular point, but I do know that that is a position we have</p> <p>21 taken and in settlements.</p> <p>22 Q I know that.</p> <p>23 Okay. Why don't we take our lunch break? Let's go -- how</p> <p>24 about 45 minutes? Is that okay with you guys?</p> <p>25 MR. AIJAZ: That works.</p> <p style="text-align: right;">Page 92</p>
<p>1 when we were talking about the initial disclosure number.</p> <p>2 Q What is the time period applicable to restitution in this</p> <p>3 case? In other words, how far did it go back?</p> <p>4 A It would be three years from September 25th, 2019, so</p> <p>5 September 25th, 2016.</p> <p>6 Q For MGI?</p> <p>7 A No, for all defendants.</p> <p>8 Q MGI wasn't sued until recently, right?</p> <p>9 A Our position is that the complaint would -- it would relate</p> <p>10 back even as to MGL.</p> <p>11 Q Even though the FTC didn't sue MGL?</p> <p>12 A That's our position.</p> <p>13 Q Okay. Now you're a lawyer advocating.</p> <p>14 MR. AIJAZ: Objection, argumentative.</p> <p>15 THE WITNESS: I'm just stating our position.</p> <p>16 BY MR. HUMMEL:</p> <p>17 Q In other words, your position is restitution three years</p> <p>18 back from September 25th, 2019?</p> <p>19 A Yes, three years back from that date.</p> <p>20 Q And how far back for civil penalties?</p> <p>21 A It would be five years from that date, so that would be</p> <p>22 2014.</p> <p>23 Q And what is a violation for purposes of calculating civil</p> <p>24 penalties in a ROSCA case like this?</p> <p>25 A Well, you know, it would be every consumer who tried to</p> <p style="text-align: right;">Page 91</p>	<p>1 MR. HUMMEL: So, it's ten to one now. Why don't we</p> <p>2 come back at 1:40?</p> <p>3 MR. AIJAZ: 1:40?</p> <p>4 MR. HUMMEL: Is that okay with you?</p> <p>5 (Recess taken at 12:51 p.m., and resuming at 1:48 p.m.)</p> <p>6 THE VIDEOGRAPHER: We're back on the record. This is</p> <p>7 media unit number four. The time is 1:48 p.m.</p> <p>8 EXAMINATION (Continuing)</p> <p>9 BY MR. HUMMEL:</p> <p>10 Q Mr. Bandy, good afternoon.</p> <p>11 A Good afternoon.</p> <p>12 Q You understand you're still under oath?</p> <p>13 A I do.</p> <p>14 Q And you're still designee for the FTC for topics identified</p> <p>15 in the notice?</p> <p>16 A Yes.</p> <p>17 Q Let's look at Exhibit 3, which is the Amended Complaint in</p> <p>18 this case. And I'll call your attention, please, to page 25,</p> <p>19 which has listed count five, alleged failure to provide a simple</p> <p>20 mechanism for consumers to stop recurring charges. Do you see</p> <p>21 that?</p> <p>22 A I do.</p> <p>23 Q Okay. So, this is the ROSCA counter to the complaint</p> <p>24 alleging a violation of section four of ROSCA, 15 U.S.C. 8403,</p> <p>25 correct?</p> <p style="text-align: right;">Page 93</p>

<p>1 A Yes.</p> <p>2 Q All right. Do you see in paragraph 86, the complaint says,</p> <p>3 in numerous instances in connection with charging consumers for</p> <p>4 goods or services sold in transactions effected on the Internet</p> <p>5 through a negative option feature as described in paragraphs 54</p> <p>6 through 60 above. Defendants have failed to provide simple</p> <p>7 mechanisms for a consumer to stop recurring charges from being</p> <p>8 placed the consumer's credit card, debit card, bank account or</p> <p>9 other financial account. My question is this. What does</p> <p>10 numerous mean? Does that mean numerous consumers can't do it?</p> <p>11 A Many, it means many, in many instances, in numerous --</p> <p>12 many, lots.</p> <p>13 Q But numerous refers to consumers, not the number of</p> <p>14 mechanisms?</p> <p>15 MR. AIJAZ: Objection, vague.</p> <p>16 MR. HUMMEL: Do you understand what I mean? It just</p> <p>17 says, in numerous instances. Does that mean --</p> <p>18 THE WITNESS: Numerous defendants have failed to</p> <p>19 provide a simple mechanism for a consumer to stop recurring</p> <p>20 charges.</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q Right. But the allegation here is that the online flow is</p> <p>23 not simple, correct?</p> <p>24 MR. AIJAZ: Objection, misstates the testimony.</p> <p>25 THE WITNESS: The online -- yes, we allege that the,</p> <p style="text-align: right;">Page 94</p>	<p>1 A It's not relevant for purposes of this count.</p> <p>2 Q What about chat, same thing?</p> <p>3 A Same thing.</p> <p>4 Q Phone, same thing?</p> <p>5 A Correct.</p> <p>6 Q So, does this online cancelation mechanism apply only to</p> <p>7 those consumers who subscribed online?</p> <p>8 A Yes.</p> <p>9 Q Okay. For purposes of the online cancelation flow, can you</p> <p>10 describe what simple means?</p> <p>11 MR. AIJAZ: Objection, that's outside the scope of the</p> <p>12 notice.</p> <p>13 THE WITNESS: Yes, a flow that is easy to find and</p> <p>14 easy to use.</p> <p>15 BY MR. HUMMEL:</p> <p>16 Q What does easy mean?</p> <p>17 A Not difficult.</p> <p>18 Q Would you agree with me that the ROSCA statute does not</p> <p>19 define simple?</p> <p>20 A Yes.</p> <p>21 Q And when you say easy to find and easy to use, that is not</p> <p>22 difficult. That is for the reasonable consumer, right?</p> <p>23 MR. AIJAZ: Objection, form and calls for legal</p> <p>24 conclusion.</p> <p>25 THE WITNESS: Yes.</p> <p style="text-align: right;">Page 96</p>
<p>1 the -- well, the online cancelation flow is not a simple</p> <p>2 mechanism.</p> <p>3 BY MR. HUMMEL:</p> <p>4 Q Okay. I'm going to use your phrase. Online cancelation</p> <p>5 flow, okay. Now, in the -- paragraph 86, it says, defendants</p> <p>6 have failed to provide simple mechanisms. Again, referring to</p> <p>7 the online cancelation flow? Can you tell me --</p> <p>8 MR. AIJAZ: Objection, misstates the testimony.</p> <p>9 Sorry, I should have waited.</p> <p>10 MR. HUMMEL: Thank you.</p> <p>11 BY MR. HUMMEL:</p> <p>12 Q Can you tell me the mechanisms that Match does offer for</p> <p>13 consumers to stop recurring charges?</p> <p>14 MR. AIJAZ: Objection, misstates the testimony.</p> <p>15 THE WITNESS: Again, I don't understand your question.</p> <p>16 Is it referring to this paragraph or in general?</p> <p>17 BY MR. HUMMEL:</p> <p>18 Q In general, what mechanisms does Match offer for consumers</p> <p>19 to stop recurring charges?</p> <p>20 A So, it is my understanding that consumers can cancel their</p> <p>21 Match auto-renew subscription through the online cancelation</p> <p>22 flow by email, phone call to customer care, facsimile, mail and</p> <p>23 online chat. Yes.</p> <p>24 Q Is it the FTC's contention that email cancelation is not</p> <p>25 simple?</p> <p style="text-align: right;">Page 95</p>	<p>1 BY MR. HUMMEL:</p> <p>2 Q And you agree that ROSCA does not require an online</p> <p>3 cancelation mechanism, correct?</p> <p>4 MR. AIJAZ: Objection, calls for legal conclusion,</p> <p>5 outside the scope of the notice.</p> <p>6 THE WITNESS: It's not stated in the statute. I agree</p> <p>7 with that.</p> <p>8 BY MR. HUMMEL:</p> <p>9 Q And you would agree that Match.com offers an online method</p> <p>10 to cancel subscriptions for subscribers who registered through</p> <p>11 the website, correct?</p> <p>12 A There is a way for consumers who signed up online to cancel</p> <p>13 online.</p> <p>14 Q Now, I want to explore some of the factors that might be</p> <p>15 used to evaluate whether something is easy to use or not, or</p> <p>16 easy to find, okay?</p> <p>17 A Okay.</p> <p>18 Q One would be time to completion. Do you agree with that?</p> <p>19 A Sure.</p> <p>20 Q Okay. And is there any objective standard against which</p> <p>21 the FTC measures simplicity with respect to time of completion?</p> <p>22 MR. AIJAZ: Objection, outside the scope of the</p> <p>23 notice.</p> <p>24 THE WITNESS: So, when you say objective, I just think</p> <p>25 reasonable person standard. So, it would be measured by a</p> <p style="text-align: right;">Page 97</p>

<p>1 reasonable person, their experience under the similar facts and 2 circumstances. 3 BY MR. HUMMEL: 4 Q Okay. So, does the FTC have in mind a maximum time that a 5 reasonable consumer or subscriber of Match.com could take to 6 cancel their subscription online? 7 A No. 8 Q Is that issue relevant in terms of evaluating simplicity, 9 in your view? 10 MR. AIJAZ: Objection, form. 11 THE WITNESS: Not really. 12 BY MR. HUMMEL: 13 Q Okay. What about the number of clicks it takes to complete 14 the transaction, the cancelation? 15 MR. AIJAZ: Objection. 16 THE WITNESS: I don't understand. 17 BY MR. HUMMEL: 18 Q Is that issue relevant to whether or not -- the number of 19 clicks, is it relevant to whether or not a canceling mechanism 20 is simple or not? 21 MR. AIJAZ: Objection as to scope. 22 THE WITNESS: Could be, sure. 23 BY MR. HUMMEL: 24 Q And the question of whether or not a cancelation mechanism 25 is simple, online cancelation is simple, you'd also want to look</p> <p style="text-align: right;">Page 98</p>	<p>1 MR. AIJAZ: Same objection. 2 THE WITNESS: We have been over that repeatedly. My 3 answer is still the same. 4 BY MR. HUMMEL: 5 Q And whether or not the website contains -- or the 6 cancelation flow contains clear labels, understandable labels, 7 that is a factor that could be considered in determining whether 8 or not cancelation flow is simple, correct? 9 MR. AIJAZ: Objection, vague and scope. 10 THE WITNESS: I'm not sure what I understand -- what 11 you mean by clear labels. 12 BY MR. HUMMEL: 13 Q Well, in the Match.com cancelation flow, I think you 14 described the steps that would be taken. You first have to 15 click on the gear. Then you click on "manage subscription". 16 Does the FTC contend that those links are not clear? 17 MR. AIJAZ: Objection, misstates the testimony. 18 THE WITNESS: I think that's more about difficulty in 19 finding the cancelation flow. I think I'd use the term, clear 20 verbiage, clear wording. And that -- when I said that, I was 21 more referring to things like the "before you go" language, 22 after the, you know, canceled subscription link, that that's not 23 clear. When the "continue" button was on the save offer, that's 24 not clear. 25 Things that -- the wording that makes it ambiguous</p> <p style="text-align: right;">Page 100</p>
<p>1 at whether consumers can find the cancelation flow, correct? 2 MR. AIJAZ: Objection, form and scope. 3 THE WITNESS: Right, the first thing is easy to find, 4 right? 5 BY MR. HUMMEL: 6 Q Easy to find? 7 A So, if it's not easy to find, then it's not simple. 8 Q How would you evaluate that, whether something is easy to 9 find? 10 A I think it's an objective standard based on, you know, what 11 a reasonable consumer's experience on the website would be. 12 Q What evidence would you look at? 13 A We could just look at the website. 14 Q So, facial review. 15 MR. AIJAZ: Objection as to scope. 16 THE WITNESS: Among other things. 17 BY MR. HUMMEL: 18 Q What other things? 19 A I don't know, but that's one thing you could look at. 20 Q You could also study it, right? You could ask a series of 21 consumers, hey, look at this website. Where would you go to 22 find your subscription cancelation flow? 23 A Sure, you could do that. It's possible. 24 Q And the FTC, to your knowledge, has not done that kind of 25 study?</p> <p style="text-align: right;">Page 99</p>	<p>1 what the consumer -- like, how to cancel. If you have consumers 2 who are, who are confused by -- if the language is confusing to 3 a reasonable consumer, then that would be a factor that would 4 make a mechanism simple. It's essentially the cancelation 5 mechanism is something consumers can't use because it's 6 confusing. 7 BY MR. HUMMEL: 8 Q Isn't it true that the only way to evaluate whether 9 something is confusing to a consumer is to do an empirical 10 study? 11 A No. 12 MR. AIJAZ: Objection, calls for legal conclusion. 13 BY MR. HUMMEL: 14 Q Is one factor in assessing whether a cancelation flow is 15 simple or not its effectiveness? 16 MR. AIJAZ: Objection, vague. 17 THE WITNESS: Could be relevant. Could be relevant. 18 BY MR. HUMMEL: 19 Q In other words, the percentage of consumers who attempt to 20 cancel using a flow and succeed, that could be relevant? 21 A Sure. 22 Q What would be the -- if you know, the sort of objective 23 standard for whether or not any particular percentage of 24 effectiveness, as I just defined it, would constitute not 25 simple?</p> <p style="text-align: right;">Page 101</p>

<p>1 MR. AIJAZ: Objection, scope.</p> <p>2 THE WITNESS: I don't think there's a set percentage</p> <p>3 amount. I think you'd have to look at it based on the data that</p> <p>4 you had, the facts and circumstances.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q So, it's possible that if 80 percent of consumers</p> <p>7 effectively canceled once they entered the flow, that would be</p> <p>8 strong evidence that the flow is simple?</p> <p>9 MR. AIJAZ: Objection, speculation.</p> <p>10 THE WITNESS: I would say that's probably strong</p> <p>11 evidence it's not simple.</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q So, what is the number?</p> <p>14 A Twenty percent just seems a lot for people who have found</p> <p>15 the flow but can't complete it. That seems like a lot, just in</p> <p>16 my personal view.</p> <p>17 Q Sure. I didn't say, can't complete it. I said, didn't</p> <p>18 complete it.</p> <p>19 A Didn't complete it.</p> <p>20 Q All right. And there are certainly, as we talked about it</p> <p>21 before, there are a number of reasons why somebody might not</p> <p>22 complete it when they enter, right?</p> <p>23 A I mean, of the reasons you gave, I acknowledge that perhaps</p> <p>24 the save offer was a possibility. The other reasons that you</p> <p>25 speculated on seemed a little far-fetched to me. So, I would</p> <p style="text-align: right;">Page 102</p>	<p>1 context, you know, is something that makes the mechanism not</p> <p>2 simple.</p> <p>3 Q And you keep saying that, in this circumstance, consumers</p> <p>4 don't typically have to enter their password to use the site.</p> <p>5 What's your basis for that?</p> <p>6 A That's the information that was told to me.</p> <p>7 Q By whom?</p> <p>8 A By the case team.</p> <p>9 Q By counsel?</p> <p>10 MR. AIJAZ: Objection, attorney-client privilege.</p> <p>11 Don't answer.</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q Okay. You don't have any evidence of the percentage of</p> <p>14 consumers who attempt to cancel -- strike that. You don't have</p> <p>15 any evidence of the percentage of consumers who want to log on</p> <p>16 to the site, to their Match.com profile, who don't have to enter</p> <p>17 a password, correct?</p> <p>18 MR. AIJAZ: Objection, form.</p> <p>19 THE WITNESS: I don't understand the question. Repeat</p> <p>20 it. Repeat it.</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q Sure. So, you don't have any evidence of the percentage of</p> <p>23 consumers who tried to log on to their profile or account on</p> <p>24 Match.com who don't have to enter their password?</p> <p>25 A I don't know. I don't know. My understanding is that if</p> <p style="text-align: right;">Page 104</p>
<p>1 say, other than the save offer, I don't think I heard anything</p> <p>2 from you that suggests a plausible reason why someone would</p> <p>3 abandon the cancellation flow midstream.</p> <p>4 Q What about if you're in the flow and the doorbell rings and</p> <p>5 you just forget?</p> <p>6 MR. AIJAZ: Objection, speculation.</p> <p>7 THE WITNESS: So, that's a reason. But to have that</p> <p>8 be of such high level of frequency that it would make a</p> <p>9 difference, I'm skeptical of it. But that's my personal view.</p> <p>10 BY MR. HUMMEL:</p> <p>11 Q Right, and there are a number of other reasons why a</p> <p>12 consumer who was in the cancellation flow might get distracted</p> <p>13 and not complete, right?</p> <p>14 A Sure, I mean, anything's possible.</p> <p>15 Q And whether or not there's a password wall, that is a</p> <p>16 factor that you would consider in whether or not, in total, a</p> <p>17 cancellation flow is not simple, correct?</p> <p>18 A In context, sure. In the context here, I think it makes a</p> <p>19 difference. I think the presence of a password requirement to</p> <p>20 cancel is not, you know, per se makes a mechanism not simple.</p> <p>21 But in this context here, where you've got a user base that</p> <p>22 typically does not have to enter their password, you know, that</p> <p>23 additional step, especially when it was flagged by Match</p> <p>24 employees as being a source of people not canceling or not</p> <p>25 abandoning the cancel flow, I think that, in this particular</p> <p style="text-align: right;">Page 103</p>	<p>1 the browser has cookies enabled that they don't have to enter</p> <p>2 their password. Maybe they do the first time, but when they go</p> <p>3 back to the website, they don't have to enter the password to --</p> <p>4 and to use the site's features.</p> <p>5 Q Sure. And again, that information is something you</p> <p>6 received from counsel?</p> <p>7 MR. AIJAZ: Objection, attorney-client privilege.</p> <p>8 Don't answer.</p> <p>9 BY MR. HUMMEL:</p> <p>10 Q Do you have any other basis for that statement other than</p> <p>11 what lawyers told you?</p> <p>12 A That is my understanding, but I did not specifically look</p> <p>13 at documents on that particular point.</p> <p>14 Q I am asking a different question, which is, do you have any</p> <p>15 source for that understanding other than what lawyers told you?</p> <p>16 MR. AIJAZ: Objection, attorney-client privilege.</p> <p>17 THE WITNESS: I'm thinking. Well, there's a common</p> <p>18 sense point that, that made me not question it, which is that if</p> <p>19 consumers have to routinely enter their password to use the</p> <p>20 site, then why would it be necessary for them to enter their</p> <p>21 password to then access the cancellation flow? Why would you ask</p> <p>22 them to enter the password twice?</p> <p>23 BY MR. HUMMEL:</p> <p>24 Q Well, if a consumer does have to input their password to</p> <p>25 access their account, would you agree that having a password</p> <p style="text-align: right;">Page 105</p>

<p>1 requirement in order to cancel is reasonable?</p> <p>2 MR. AIJAZ: Objection, calls for speculation.</p> <p>3 THE WITNESS: Repeat the question.</p> <p>4 BY MR. HUMMEL:</p> <p>5 Q If a consumer does have to input their password regularly</p> <p>6 to access their account, would you agree that having a password</p> <p>7 requirement to cancel is reasonable?</p> <p>8 MR. AIJAZ: Calls for speculation, not relevant.</p> <p>9 THE WITNESS: Yeah, I don't know. I don't know.</p> <p>10 Yeah, maybe.</p> <p>11 BY MR. HUMMEL:</p> <p>12 Q Would you agree with me that Match.com discloses its</p> <p>13 cancellation methods or mechanisms at the time the consumer</p> <p>14 subscribes?</p> <p>15 MR. AIJAZ: Objection, calls for legal conclusion.</p> <p>16 THE WITNESS: Can you repeat your question?</p> <p>17 So, methods plural, no. I believe -- I'm not sure,</p> <p>18 but if anything, it would be the online cancellation method. But</p> <p>19 I'm not certain I remember that in the sign-up flow. I think</p> <p>20 it's there, but, but methods, plural, I'm almost certain not.</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q Would you agree that the online cancellation mechanism is</p> <p>23 disclosed at the time of subscription?</p> <p>24 A I think so, but I'm not sure. I mean, if you show me the</p> <p>25 sign-up flow, we can see, but I can't remember.</p> <p style="text-align: right;">Page 106</p>	<p>1 employees feel that it's five or six is like the minimum you</p> <p>2 could do it in.</p> <p>3 Q Do you know what the average time to complete the</p> <p>4 cancellation flow is for a reasonable consumer?</p> <p>5 A I didn't see any data on that. I, my -- yeah, I didn't see</p> <p>6 any data on that.</p> <p>7 Q Did you see any data on the percentage of consumers who</p> <p>8 attempt to find the cancellation flow and who can't?</p> <p>9 A Not any data on that, no.</p> <p>10 Q Did you see any data on whether or not consumers are</p> <p>11 confused by the labels on the cancellation flow?</p> <p>12 MR. AIJAZ: Objection.</p> <p>13 THE WITNESS: Data on it?</p> <p>14 MR. HUMMEL: Yeah.</p> <p>15 THE WITNESS: No, I don't think -- I mean, I can't</p> <p>16 recall seeing -- no, not data, not data.</p> <p>17 BY MR. HUMMEL:</p> <p>18 Q Does the FTC consider or take into account how many ways</p> <p>19 there are to get to the cancellation flow in determining whether</p> <p>20 or not it is simple?</p> <p>21 MR. AIJAZ: Objection, scope.</p> <p>22 THE WITNESS: Sort of?</p> <p>23 BY MR. HUMMEL:</p> <p>24 Q What does that mean, sort of?</p> <p>25 A Well, I think that we would look at -- if there are</p> <p style="text-align: right;">Page 108</p>
<p>1 Q All right. We discussed a number of the factors that might</p> <p>2 be relevant to ascertaining whether a flow is simple or not.</p> <p>3 And I understand we're not isolating anyone or your position is</p> <p>4 you're not isolating anyone. But taken in total, there's an</p> <p>5 allegation in this case that the Match.com online cancellation</p> <p>6 flow is not simple.</p> <p>7 A If you look at the totality of this, the factors that I</p> <p>8 mentioned at the beginning that makes the cancellation flow, it's</p> <p>9 not easy to find. It's not easy to use. Therefore, it's not</p> <p>10 simple.</p> <p>11 Q All right. And let's talk about the evidence with respect</p> <p>12 to those factors. How many clicks, to the best of your</p> <p>13 knowledge, the best of the FTC's knowledge, does it take to</p> <p>14 cancel on the online flow?</p> <p>15 A I don't think there's one specific answer to that because</p> <p>16 it varies, right? Because you may -- some people don't get the</p> <p>17 save offer. I'm not sure everyone gets the Captcha. I'm not</p> <p>18 sure. My understanding is you can get through the cancellation</p> <p>19 flow without answering the survey questions. So, if you click</p> <p>20 on the survey question and you click on another question, that's</p> <p>21 more clicks.</p> <p>22 So, I don't know that there's a definitive answer to that.</p> <p>23 I think maybe. I think Match employees said five or six is the</p> <p>24 minimum. I think that's if you click through the surveys and</p> <p>25 maybe no save offer. I don't know, but I think maybe Match</p> <p style="text-align: right;">Page 107</p>	<p>1 multiple ways to get to the cancellation flow, we would look at,</p> <p>2 how easy are those ways to find? So, if there are, like, five</p> <p>3 different ways to get to the cancellation flow but they're all</p> <p>4 buried or difficult to find, then I don't know that we would</p> <p>5 really consider those. So, it depends more on -- it's more than</p> <p>6 just the number of ways. It matters qualitatively how those</p> <p>7 ways work.</p> <p>8 Q Sure, all right. In terms of effectiveness, what does the</p> <p>9 FTC believe is the percentage of consumers who attempt to cancel</p> <p>10 using the online flow and succeed?</p> <p>11 MR. AIJAZ: Objection, vague.</p> <p>12 THE WITNESS: I mean, that would be in Match's data.</p> <p>13 I think Match has data on that. There was one -- there was that</p> <p>14 one spreadsheet that had, like, the 20 -- I think it was 24. It</p> <p>15 was a spreadsheet that was sent in 2015, early 2015 that had</p> <p>16 annual -- or no, no. That was -- okay.</p> <p>17 There was an email in September of 2015 that attached</p> <p>18 a spreadsheet of data from August of -- the spreadsheet says</p> <p>19 August and there is a tab on that spreadsheet that says,</p> <p>20 abandonment cancel or cancel abandonment. And on that tab it</p> <p>21 has -- it reports, on the sheet itself, it says, one week in</p> <p>22 August. So, given that it was September 20 -- I want to say --</p> <p>23 I'm pretty sure it was 2015. It was August of 2015.</p> <p>24 And on that spreadsheet, it has -- it takes those two</p> <p>25 weeks and it extrapolates it out. But I think on that</p> <p style="text-align: right;">Page 109</p>

<p>1 spreadsheet, they have successful resignations and abandoned</p> <p>2 ones, but I cannot remember the percentage breakdown. But it</p> <p>3 was -- there were a lot of abandonments. Like, it wasn't like a</p> <p>4 small percentage of the successful. That's my recollection.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q To your knowledge, sir, has the FTC ever brought a case</p> <p>7 under ROSCA alleging that an online cancellation flow is not</p> <p>8 simple where the, where the allegation is simply that the flow</p> <p>9 is not simple?</p> <p>10 MR. AIJAZ: Objection, scope.</p> <p>11 THE WITNESS: What do you mean by flow is not simple?</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q So, here you have -- you concede that Match.com has an</p> <p>14 online subscription process, right? And Match.com has an online</p> <p>15 cancellation flow. Has the FTC ever brought a case before where</p> <p>16 it's alleging that only the online cancellation flow is not</p> <p>17 sufficiently simple?</p> <p>18 A I don't know.</p> <p>19 Q Okay. In every case I'm aware of, and I do study this a</p> <p>20 little bit, the FTC has also alleged that the telephone -- that</p> <p>21 there's not an online cancellation flow at all and the telephone</p> <p>22 cancellation mechanism has inordinate wait times. The companies</p> <p>23 are defrauding consumers as to whether they are actually</p> <p>24 canceled or not and they keep the recurring charges, or you</p> <p>25 can't get through to customer service at all. I'm not aware of</p> <p style="text-align: right;">Page 110</p>	<p>1 MR. AIJAZ: It's not a question pending.</p> <p>2 MR. HUMMEL: Not a question pending. All right.</p> <p>3 BY MR. HUMMEL:</p> <p>4 Q But other than ABCmouse, which is the Age of Learning case,</p> <p>5 you can't think of anyone else?</p> <p>6 MR. AIJAZ: Objection, scope.</p> <p>7 THE WITNESS: I'm not sure that ABCmouse is the Age of</p> <p>8 Learning case.</p> <p>9 MR. HUMMEL: It is.</p> <p>10 THE WITNESS: Okay. I mean, that's your</p> <p>11 representation.</p> <p>12 MR. HUMMEL: Litigate your case. That's fine.</p> <p>13 THE WITNESS: Whatever. Anyways, I did not study all</p> <p>14 the ROSCA cases in preparation for today, so I don't know</p> <p>15 whether it is or not. In terms of what I can personally</p> <p>16 remember, I can't think of one where the online flow was, was</p> <p>17 the -- where the online cancellation mechanism is what we were</p> <p>18 alleging was simple, other than this case. And I think maybe</p> <p>19 ABCmouse may be one of those cases, but you know, it is what it</p> <p>20 is.</p> <p>21 MR. HUMMEL: Sure.</p> <p>22 THE WITNESS: And -- but that does not mean that</p> <p>23 definitively that the FTC is representing that it has never done</p> <p>24 that. I personally cannot remember that and it was not part of</p> <p>25 my preparation for the topics today.</p> <p style="text-align: right;">Page 112</p>
<p>1 a single case where the FTC has alleged where there is an online</p> <p>2 subscription method and an online cancellation method that the</p> <p>3 cancellation method is not sufficiently simple. Are you aware of</p> <p>4 any other case?</p> <p>5 MR. AIJAZ: Objection, scope, relevancy and form.</p> <p>6 THE WITNESS: I'm not sure. But now that I think of</p> <p>7 it, maybe. Maybe I can think of one.</p> <p>8 BY MR. HUMMEL:</p> <p>9 Q Which one?</p> <p>10 A ABCmouse.</p> <p>11 Q Age of Learning?</p> <p>12 A I think that sounds right.</p> <p>13 Q The allegations in that complaint were that there was</p> <p>14 inordinate wait times on the phone. There was never an issue</p> <p>15 about the simplicity of flow, only that it was under the parent</p> <p>16 section of the website and not under the subscription section of</p> <p>17 the website.</p> <p>18 A I thought that was the one where they kept presenting you</p> <p>19 with offer after offer after offer.</p> <p>20 Q Not a save offer case?</p> <p>21 A I didn't delve into that for preparation today, so I may be</p> <p>22 misremembering it. That was the one that occurred to me, but I</p> <p>23 might have had my case names mixed up.</p> <p>24 Q I know the case and it had to do with where you got into</p> <p>25 the flow initially, if you recall.</p> <p style="text-align: right;">Page 111</p>	<p>1 BY MR. HUMMEL:</p> <p>2 Q That's fine. What public guidance has the FTC ever given</p> <p>3 to companies on what constitutes a simple online cancellation</p> <p>4 flow?</p> <p>5 MR. AIJAZ: Objection, outside the scope of the</p> <p>6 notice.</p> <p>7 THE WITNESS: I think that the negative option policy</p> <p>8 statement provides some guidance. Maybe there is some stuff in</p> <p>9 the dark patterns workshop report. I think some of the</p> <p>10 principles in the Dot Com Disclosures guideline would have</p> <p>11 bearing there.</p> <p>12 MR. HUMMEL: Let's look at the enforcement policy</p> <p>13 statement regarding negative option marketing.</p> <p>14 MR. AIJAZ: Thank you.</p> <p>15 Is this five?</p> <p>16 MR. HUMMEL: Yeah, sorry.</p> <p>17 (Deposition Exhibit No. 5, marked for identification.)</p> <p>18 BY MR. HUMMEL:</p> <p>19 Q Exhibit 5 is a copy of the FTC's enforcement policy</p> <p>20 statement regarding negative option marketing. I think you</p> <p>21 mentioned that you reviewed this in connection with the</p> <p>22 deposition today, right?</p> <p>23 A I have. While I'll say this is in a -- I reviewed the</p> <p>24 federal registered version of this, so it's in a little</p> <p>25 different format, but -- in terms of the layout of the page.</p> <p style="text-align: right;">Page 113</p>

<p>1 But, but I will accept your representation that this is an 2 accurate reprinting of the negative option policy statement. 3 Q And a policy statement is not a rule, right? It's a guide? 4 MR. AIJAZ: Objection, calls for leading conclusion 5 outside the scope of the notice. 6 THE WITNESS: I mean, policy statement is not a rule. 7 That's true. I don't know whether I can -- I don't know whether 8 I would say it's a guide. A policy statement is a policy 9 statement. 10 BY MR. HUMMEL: 11 Q Okay. So, are you aware of any -- if you look at page 14 12 of this enforcement policy statement regarding negative option 13 marketing, it has a section relating to cancellation. 14 A Yes. 15 Q And it starts, ROSCA requires negative option sellers to 16 provide a simple, reasonable means for consumers to cancel their 17 contracts. See that? 18 A I do. 19 Q And this is a statement by the FTC, correct? 20 A This is a statement by the commission. 21 Q Right. So, ROSCA does not in fact say, reasonable means. 22 All it says is simple, right? 23 A I think that's right. But, I mean, if you want to put 24 ROSCA, the statute in front of me so that I can -- yeah, I think 25 that's right.</p> <p style="text-align: right;">Page 114</p>	<p>1 click a button, if you have to check a box to turn auto-renew 2 on, that's one click, one step. But my understanding with Match 3 is that if you purchase a subscription, it automatically comes 4 initiated with the negative option feature. 5 Q So, you don't consider the registration mechanism as part 6 of the subscription process? 7 A No. 8 Q I'm correct that you don't. I don't want to do a double 9 negative again. 10 MR. AIJAZ: Objection. 11 THE WITNESS: So, why don't you ask the question 12 again? 13 BY MR. HUMMEL: 14 Q Am I correct that the FTC doesn't consider the registration 15 process to be part of the subscription process for the negative 16 option? 17 MR. AIJAZ: Objection, misstates the exhibit. 18 THE WITNESS: You are correct. 19 BY MR. HUMMEL: 20 Q Okay. And then it says, going on, on page 14, for example, 21 to ensure compliance with the simple cancellation mechanism 22 requirement, negative option sellers should not subject 23 consumers to new offers or similar attempts to save a negative 24 option arrangement that impose unreasonable delays on consumers' 25 cancellation efforts. Do you see that?</p> <p style="text-align: right;">Page 116</p>
<p>1 Q Then the FTC writes, in connection with its policy 2 statement, to meet this standard, negative option sellers should 3 provide cancellation mechanisms that are at least as easy to use 4 as the method the consumer used to initiate the negative option 5 feature. Do you see that? 6 A I do see that. 7 Q Has the FTC analyzed whether the subscription mechanism to 8 subscribe to Match.com is easier or more difficult than the 9 cancellation mechanism? 10 A Oh, it's much easier. 11 Q Subscribing? 12 A Yes. 13 Q How many clicks does it take to subscribe? 14 A Zero. 15 Q Have you logged into Match.com and tried to sign up? 16 A My understanding is when you sign up for a Match.com 17 account, if you choose to purchase a subscription, you have to 18 buy it with the negative option. You can't not buy it without 19 it. So, it's a zero click. You buy a subscription, it comes 20 with the negative option. 21 Q But that's not signing up. You have to sign up for 22 Match.com. 23 A It says, used to initiate the negative option feature. So, 24 if you have a website where you can purchase one month but not 25 have AR on, auto-renew on, then you can maybe -- if you have to</p> <p style="text-align: right;">Page 115</p>	<p>1 A I do. 2 Q And then, important footnote, while requests to consider an 3 offer or discount would not amount to unreasonable delay, 4 multiple requests for a consumer to listen to additional offers, 5 lengthy pitches or ignoring a consumer's request to decline 6 further offers could amount to an unreasonable delay. Is it the 7 FTC's contention in this case that Match's surveys and save 8 offers constitute unreasonable delay? 9 MR. AIJAZ: Objection, relevancy. 10 THE WITNESS: Yes. 11 BY MR. HUMMEL: 12 Q Do you know the average time that it takes for a consumer 13 to answer the survey or respond affirmatively or negatively to 14 the same offer? 15 MR. AIJAZ: Objection, asked and answered. 16 THE WITNESS: No. 17 BY MR. HUMMEL: 18 Q So, what does unreasonable delay mean? 19 A I mean, in this context, I'd say unnecessary. 20 MR. AIJAZ: Objection, outside the scope of the 21 notice. 22 BY MR. HUMMEL: 23 Q And it says, in addition -- I'm going up in the page again. 24 In addition, negative option sellers should provide their 25 cancellation mechanisms at least through the same medium, such as</p> <p style="text-align: right;">Page 117</p>

<p>1 website or mobile application the consumer used to consent to</p> <p>2 the negative option feature. Match.com does that, correct?</p> <p>3 A Yes, the online cancelation flow satisfies this.</p> <p>4 Q Right. And then it says, the negative option seller should</p> <p>5 provide, at a minimum, the simple mechanism over the same</p> <p>6 website or web-based application the consumer used to purchase</p> <p>7 the negative option feature. Match.com complies with that</p> <p>8 guidance too, correct?</p> <p>9 MR. AIJAZ: Objection as to form.</p> <p>10 THE WITNESS: For website, yes. I thought there was</p> <p>11 some time period where consumers could only cancel on desktop,</p> <p>12 but I could never quite figure all the details out of that. But</p> <p>13 I think that's no longer the case. I think people can cancel on</p> <p>14 a mobile browser now. Yeah, because that -- yeah, I think</p> <p>15 that's right. So, subject to that, I think the answer is, yes.</p> <p>16 BY MR. HUMMEL:</p> <p>17 Q To your knowledge, has the FTC ever litigated a case to</p> <p>18 judgment in which it applied any specific standard for</p> <p>19 simplicity?</p> <p>20 MR. AIJAZ: Objection, scope and relevance.</p> <p>21 THE WITNESS: I can't think of any litigated to</p> <p>22 judgment.</p> <p>23 BY MR. HUMMEL:</p> <p>24 Q Given the -- your view, your statement of what the FTC</p> <p>25 believes is the subscription mechanism for the negative option</p> <p style="text-align: right;">Page 118</p>	<p>1 MR. HUMMEL: I want to apologize. I just had a rapid</p> <p>2 onset stomach problem and I don't think I can continue</p> <p>3 physically. I literally need to be somewhere else. So, I would</p> <p>4 request that the FCC agrees to adjourn, continue at a mutually</p> <p>5 convenient date and time and I'll make it convenient for the</p> <p>6 FTC. But I don't want anyone in the room to get this and I want</p> <p>7 to do it effectively.</p> <p>8 MR. TEPFER: Of course. Well, Chad, I was going to</p> <p>9 say, I'm really sorry to hear you're not feeling well. I hope</p> <p>10 you get better soon.</p> <p>11 We're happy to suspend the deposition for today. I</p> <p>12 just want to ask if we can get into agreement just because</p> <p>13 Bikram spent so long preparing. He doesn't work on this all the</p> <p>14 time, so his memory will fade. If we could reconvene within a</p> <p>15 week and get the parties to do this over Zoom perhaps, as a Zoom</p> <p>16 deposition, you know, we would appreciate agreement on that.</p> <p>17 But I certainly understand, given your situation, you're not</p> <p>18 able to continue.</p> <p>19 MR. HUMMEL: No, I'm fine with that and I hope to be</p> <p>20 able to reconvene as soon as I can fly back to L.A. and we can</p> <p>21 do it by Zoom. I'm fine with that.</p> <p>22 MR. AIJAZ: Okay.</p> <p>23 MR. HUMMEL: I need client approval for that, but I</p> <p>24 assume you're okay with it. Jeanette's okay with it too.</p> <p>25 So, let's recess the deposition. Let's plan to do it,</p> <p style="text-align: right;">Page 120</p>
<p>1 feature of the Match.com website, would anything other than a</p> <p>2 single click to un-subscribe violate the negative option policy?</p> <p>3 MR. AIJAZ: Objection as to scope and form.</p> <p>4 THE WITNESS: Well, it depends. Like, in general or</p> <p>5 as it relates to Match?</p> <p>6 MR. HUMMEL: As it relates to -- in general?</p> <p>7 THE WITNESS: Well, no. If you had a, if you had a</p> <p>8 method that required many steps to initiate the negative option</p> <p>9 feature, then the cancelation mechanism would be evaluated</p> <p>10 against that for purposes of this statement.</p> <p>11 BY MR. HUMMEL:</p> <p>12 Q To your knowledge, has the FTC ever promulgated any other</p> <p>13 guidance than the negative option guidance that defines what</p> <p>14 simple means for online cancelation mechanisms?</p> <p>15 MR. AIJAZ: Objection, as to scope.</p> <p>16 THE WITNESS: I don't think so, but I'm not certain.</p> <p>17 MR. HUMMEL: Can we take a five-minute break and go</p> <p>18 off the record?</p> <p>19 THE WITNESS: All right.</p> <p>20 THE VIDEOGRAPHER: We're going off the record. This</p> <p>21 is media unit number four. The time is 2:24 p.m.</p> <p>22 (Recess from 2:24 p.m. to 2:48 p.m.)</p> <p>23 THE VIDEOGRAPHER: Back on the record. Beginning</p> <p>24 media unit five. The time is 2:48 p.m.</p> <p>25 EXAMINATION (Continuing)</p> <p style="text-align: right;">Page 119</p>	<p>1 you know, Thursday or Friday of this week if you're available at</p> <p>2 a reasonably convenient time. I don't think I have more than</p> <p>3 two and a half hours left. Don't hold me to that because it</p> <p>4 depends on the length of answers, but I'm about halfway done.</p> <p>5 MR. AIJAZ: I mean, obviously as long as the lapse</p> <p>6 time is still going to continue counting, it's the same</p> <p>7 deposition. And I think it makes sense for you to tell us, you</p> <p>8 know, when you get home, get some rest or whatever, when you'd</p> <p>9 be ready. I think that makes the most sense.</p> <p>10 MR. HUMMEL: Yeah.</p> <p>11 THE WITNESS: So, Thursday and Friday are pretty good</p> <p>12 for me right now. So, the sooner, the sooner that we can get it</p> <p>13 on the calendar, the more gooder [ph] it will remain.</p> <p>14 MR. HUMMEL: That's a good way to put it. Let's stop</p> <p>15 there. Let's go off the record.</p> <p>16 THE VIDEOGRAPHER: We're off the record at 2:50 p.m.</p> <p>17 and this concludes this testimony given by Mr. Bandy.</p> <p>18 (The matter concluded at 2:50 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 121</p>

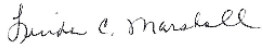
<p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 I, Linda C. Marshall, certify that the foregoing is a</p> <p>3 correct transcript from the record of proceedings in the</p> <p>4 above-entitled matter.</p> <p>5</p> <p>6</p> <p>7 </p> <p>8 Linda C. Marshall, RPK</p> <p>9 Official Court Reporter</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 122</p>	<p>1 Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>2 Bikram Bandy 5535418</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Bikram Bandy, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10</p> <p>11 _____</p> <p>12 Bikram Bandy Date</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16</p> <p>17 _____</p> <p>18</p> <p>19 NOTARY PUBLIC</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 124</p>
<p>1 Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>2 Bikram Bandy Job No. 5535418</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE _____ LINE _____ CHANGE _____</p> <p>5 _____</p> <p>6 REASON _____</p> <p>7 PAGE _____ LINE _____ CHANGE _____</p> <p>8 _____</p> <p>9 REASON _____</p> <p>10 PAGE _____ LINE _____ CHANGE _____</p> <p>11 _____</p> <p>12 REASON _____</p> <p>13 PAGE _____ LINE _____ CHANGE _____</p> <p>14 _____</p> <p>15 REASON _____</p> <p>16 PAGE _____ LINE _____ CHANGE _____</p> <p>17 _____</p> <p>18 REASON _____</p> <p>19 PAGE _____ LINE _____ CHANGE _____</p> <p>20 _____</p> <p>21 REASON _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Bikram Bandy Date</p> <p>25</p> <p style="text-align: right;">Page 123</p>	<p>1 maijaz@ftc.gov</p> <p>2 November 10, 2022</p> <p>3 Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>4 DEPOSITION OF: Bikram Bandy 5535418</p> <p>5 The above-referenced witness transcript is</p> <p>6 available for read and sign.</p> <p>7 Within the applicable timeframe, the witness</p> <p>8 should read the testimony to verify its accuracy. If</p> <p>9 there are any changes, the witness should note those</p> <p>10 on the attached Errata Sheet.</p> <p>11 The witness should sign and notarize the</p> <p>12 attached Errata pages and return to Veritext at</p> <p>13 errata-tx@veritext.com.</p> <p>14 According to applicable rules or agreements, if</p> <p>15 the witness fails to do so within the time allotted,</p> <p>16 a certified copy of the transcript may be used as if</p> <p>17 signed.</p> <p>18 Yours,</p> <p>19 Veritext Legal Solutions</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 125</p>

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

-----:
FEDERAL TRADE COMMISSION, :
Plaintiff, :
vs. : Case No.:
MATCH GROUP, INC., a : 3:19-cv-02281-K
corporation, and MATCH GROUP, :
LLC, formerly known as :
MATCH.COM, LLC, a limited :
liability company, :
Defendants. : VOLUME II
-----:

Remote Zoom Deposition of CORPORATE REP OF THE
FEDERAL TRADE COMMISSION

APPEARING REMOTELY

Monday, October 31, 2022

1:30 p.m.

Pages 126 - 221

Reported by: Robert M. Jakupciak, RPR

Page 126

1	Remote Zoom Deposition of BIKRAM BANDY,	1	C O N T E N T S
2	held at the offices of:	2	THE WITNESS: BIKRAM BANDY
3	Veritext - Washington, D.C.	3	EXAMINATION PAGE NO.
4	1250 Eye Street, N.W.	4	By Mr. Hummel 132
5	Washington, D.C.	5	
6		6	
7		7	
8	Pursuant to Notice, before Robert Michael	8	E X H I B I T S
9	Jakupciak, RPR, a Notary Public in and for the	9	BANDY EXHIBIT NUMBER PAGE NO.
10	District of Columbia, when were present on behalf of	10	Exhibit 10 Stipulated Order for Permanent 134
11	the respective parties:	11	Injunction and Monetary Judgment
12		12	Exhibit 7 Stipulated Order For Permanent 142
13		13	Injunction and Other Equitable
14		14	Relief
15		15	Exhibit 6 Video 157
16		16	Exhibit 11 Excel PDF 171
17		17	Exhibit 8 How to Make Effective Disclosures 172
18		18	in Digital Advertising
19		19	Exhibit 9 Plaintiff's Second Amended 174
20		20	Responses to First Set of
21		21	Interrogatories
22		22	
	Page 127		Page 129
1	A P P E A R A N C E S	1	E X H I B I T S
2	On behalf of the Plaintiff:	2	BANDY EXHIBIT NUMBER PAGE NO.
3	M. HASAN AIJAZ, ESQUIRE	3	Exhibit 12 Stipulated Order for Permanent 183
4	REID ABRAM TEPFER, ESQUIRE	4	Injunction, Monetary Relief,
5	Federal Trade Commission	5	Civil Penalties, and Other Relief
6	1999 Bryan Street, Suite 2150	6	Exhibit 13 Letter dated 8/6/19 201
7	Dallas, Texas 75201	7	Exhibit 14 Letter dated 5/20/22 202
8	(214) 979-9386	8	Exhibit 15 Email dated 4/15/19 205
9	maijaz@ftc.gov	9	Exhibit 16 Document Bates No. MATCHFTC774522 208
10		10	Exhibit 17 Email dated 10/7/21 210
11	On behalf of the Defendants:	11	Exhibit 18 Credit, Refund and 6MG Guidelines
12	CHAD S. HUMMEL, ESQUIRE	12	Exhibit 19 Responses and Objections to First 212
13	TAYLOR G. BRAGG, ESQUIRE	13	Set of Interrogatories
14	Sidley Austin, LLP	14	Exhibit 20 Verification of Responses to
15	1999 Avenue of the Stars, 17th Floor	15	Interrogatories
16	Los Angeles, California 90067	16	
17	(310) 595-9500	17	
18	chummel@sidley.com	18	
19		19	(Exhibits attached to transcript.)
20	Also Present: Videographer: Samuel Francis	20	
21	Jeannette Teckman, Esquire	21	
22	Samuel Kitchens, Esquire	22	
	Page 128		Page 130

<p>1 the same as the proposed stipulated Order for</p> <p>2 permanent injunction that was provided to Match, I</p> <p>3 think that's the only written notice we have of what</p> <p>4 you will be seeking in court, so I think I'm</p> <p>5 entitled to use it for purposes of understanding the</p> <p>6 scope of the injunctive relief that you are seeking.</p> <p>7 So you don't have to say it, but you can have a</p> <p>8 standing objection is my point.</p> <p>9 MR. AIJAZ: Yeah. And that's fine as to</p> <p>10 the admissibility issue, but other issues of course</p> <p>11 I'm going to object to preserve those. But just so</p> <p>12 it's clear, for the purposes of this line of</p> <p>13 questioning regarding topic two, there will be a</p> <p>14 standing objection to the extent you are talking</p> <p>15 about this document that was provided in, through</p> <p>16 mediation and settlement negotiations. There will</p> <p>17 be a standing objection to any question about the</p> <p>18 document or relating to it.</p> <p>19 MR. HUMMEL: I appreciate that. Can you</p> <p>20 send the one that the witness looked at?</p> <p>21 MR. AIJAZ: It should be on its way.</p> <p>22 MR. HUMMEL: Do we have it, Taylor?</p> <p style="text-align: right;">Page 151</p>	<p>1 any company that has a subscription set-up that has</p> <p>2 an auto-renewal automatically with it would always</p> <p>3 be in violation of ROSCA because nothing was</p> <p>4 required to initiate the auto-renewal and there</p> <p>5 would be more than one click to cancel?</p> <p>6 MR. AIJAZ: Objection. Scope of the</p> <p>7 notice.</p> <p>8 A I don't know what the FTC's general</p> <p>9 position is on that.</p> <p>10 Q Why isn't buying a subscription to</p> <p>11 Match.com part of the method used to initiate the</p> <p>12 negative option feature?</p> <p>13 MR. AIJAZ: Objection. Form of the</p> <p>14 question.</p> <p>15 A Well, in the negative option policy</p> <p>16 statement it does say initiate the negative option,</p> <p>17 and sometimes you can go to a website and purchase</p> <p>18 something and purchase without the auto-renew. So</p> <p>19 when you purchase something and the auto-renew is</p> <p>20 automatically there, then it's, you know, it's a</p> <p>21 very simple way to initiate the auto-renew because</p> <p>22 you can't purchase anything without the auto-renew.</p> <p style="text-align: right;">Page 153</p>
<p>1 MS. BRAGG: Yeah. We just got it.</p> <p>2 MR. HUMMEL: Can you mark it as 221? And</p> <p>3 let's go ahead and mark it now then. Taylor, can</p> <p>4 you interrupt at a convenient time and tell me when</p> <p>5 220 is in the Sidley private folder?</p> <p>6 BY MR. HUMMEL:</p> <p>7 Q Okay. So my question, Mr. Bandy, is just</p> <p>8 to confirm that the FTC was not requiring that the</p> <p>9 cancellation mechanism, which has to be simple under</p> <p>10 ROSCA, be at least as simple as the mechanism the</p> <p>11 consumer used to initiate the negative option piece?</p> <p>12 It doesn't say that; correct?</p> <p>13 MR. AIJAZ: Objection. Form and misstates</p> <p>14 the exhibit.</p> <p>15 A I mean this paragraph does say earlier in</p> <p>16 connection with the advertising, marketing,</p> <p>17 promoting, offering for sale or selling of any</p> <p>18 online dating service with a negative option</p> <p>19 feature. So a negative option feature is part of</p> <p>20 this.</p> <p>21 Q Well, it's in that language now. Let me</p> <p>22 ask you a question. Is it the FTC's position that</p> <p style="text-align: right;">Page 152</p>	<p>1 Q So if you subscribed to a service and as</p> <p>2 part of that subscription you get an auto-renew</p> <p>3 feature, which the FTC has previously recognized can</p> <p>4 be a benefit to consumers because they don't have to</p> <p>5 constantly renew and constantly think about paying</p> <p>6 as long as it's adequately disclosed, if that</p> <p>7 negative option feature automatically comes with a</p> <p>8 subscription and the FTC's position is that</p> <p>9 acquiring the negative option feature is automatic,</p> <p>10 requiring no clicks, how can a company ever comply</p> <p>11 with the enforcement policy statement regarding</p> <p>12 negative option marketing?</p> <p>13 MR. AIJAZ: Objection. Form of the</p> <p>14 question, scope of notice and calls for a</p> <p>15 hypothetical, and speculation.</p> <p>16 A So I don't think -- I mean you keep</p> <p>17 talking about clicks as if clicks are the only</p> <p>18 measure or one of the key measures of how simple a</p> <p>19 mechanism or not. It is one thing you can look at,</p> <p>20 how many clicks does it take, but it -- just because</p> <p>21 you can have zero clicks to sign up for the</p> <p>22 auto-renew doesn't necessarily mean that the only</p> <p style="text-align: right;">Page 154</p>

<p>1 way you can cancel is via some zero click mechanism.</p> <p>2 But when you have zero clicks to sign up</p> <p>3 for the auto-renew, which is what the case is here</p> <p>4 to the best of my understanding, you know, when you</p> <p>5 have seven, eight clicks to cancel, well, I think</p> <p>6 that's something that you would weigh as one of many</p> <p>7 factors in determining the simplicity of the</p> <p>8 cancellation mechanism vis-a-vis the simplicity of</p> <p>9 the mechanism to turn on the auto-renew.</p> <p>10 So when you are looking at that</p> <p>11 comparison, you would start saying, hey, it's</p> <p>12 really, really easy to turn on the auto-renew here,</p> <p>13 and so you would measure that to the cancellation</p> <p>14 flow, which here does take far more than zero</p> <p>15 clicks.</p> <p>16 Q But isn't it true in the case here that it</p> <p>17 requires nothing to activate the auto-renew. All</p> <p>18 you have to do is subscribe?</p> <p>19 MR. AIJAZ: Objection. Form.</p> <p>20 A That is my understanding.</p> <p>21 Q And isn't it true that when you, for</p> <p>22 example, subscribe to the New York Time online or</p> <p style="text-align: right;">Page 155</p>	<p>1 "used to initiate the negative option feature"?</p> <p>2 MR. AIJAZ: Objection. Outside the scope</p> <p>3 of the notice.</p> <p>4 A Yeah, that didn't come up in my</p> <p>5 preparation, but if you have an auto-renew that's</p> <p>6 very, that consumers essentially have to sign up</p> <p>7 for, then the cancellation mechanism would have to</p> <p>8 be pretty simple, sure.</p> <p>9 Q What does pretty simple mean?</p> <p>10 A It would have to be really easy to find</p> <p>11 and really easy to use.</p> <p>12 Q Really easy to find and really easy to</p> <p>13 use. Okay.</p> <p>14 (Bandy Exhibit Number 6</p> <p>15 was marked for identification.)</p> <p>16 BY MR. HUMMEL:</p> <p>17 Q Let's go, if you wouldn't mind, to Exhibit</p> <p>18 6. And if you open that, you'll see it's a video.</p> <p>19 A All right. Do you want me to start</p> <p>20 playing it?</p> <p>21 Q So I'm marking Exhibit 6 as a video. It</p> <p>22 is, has been marked in this case as MATCHFTC Bates</p> <p style="text-align: right;">Page 157</p>
<p>1 the Wall Street Journal online, or the Washington</p> <p>2 Post online, it's auto-renew? So you don't -- you</p> <p>3 just subscribe and it automatically is auto-renew?</p> <p>4 MR. AIJAZ: Objection. Calls for facts</p> <p>5 not in evidence, calls for speculation, outside the</p> <p>6 scope of the notice. He didn't test all these</p> <p>7 websites.</p> <p>8 A Yeah, I, I don't know whether you can buy</p> <p>9 subscriptions to those services without auto-renew,</p> <p>10 what you have to do to agree to the auto-renew, nor</p> <p>11 do I know what the cancellation mechanisms of those</p> <p>12 sites are. I didn't, I didn't -- that did not come</p> <p>13 up in my preparation.</p> <p>14 Q Have you looked at the relative simplicity</p> <p>15 of how to cancel on an iPhone for a subscription,</p> <p>16 the Apple pay mechanism, how many clicks that takes?</p> <p>17 MR. AIJAZ: Objection. Form.</p> <p>18 A That did not come up in my preparation.</p> <p>19 Q All right. How would a company that has a</p> <p>20 subscription set to auto-renew automatically ever</p> <p>21 have a cancellation method as simple as the, as the</p> <p>22 method, let me quote from the policy statement here,</p> <p style="text-align: right;">Page 156</p>	<p>1 Number 774671.webm.</p> <p>2 And yes, I would like you to -- I can't --</p> <p>3 I don't think I can share screen on this, on this</p> <p>4 particular application, but why don't you just play</p> <p>5 it, Mr. Bandy, and tell me when you've completed.</p> <p>6 It takes about 55 seconds to play the video. Okay?</p> <p>7 A Okay.</p> <p>8 Q As you are playing it, you'll see that</p> <p>9 somebody enters a password and signs in. Then their</p> <p>10 account page comes up. They find the gear at the</p> <p>11 top and go to settings, click on settings. Then</p> <p>12 they go to manage subscription and they click on</p> <p>13 manage subscription.</p> <p>14 Then a wheel spins, they have to reenter</p> <p>15 the password they just entered, do a recapture that</p> <p>16 says they are not a robot and click a continue</p> <p>17 button. Then they have something that says cancel</p> <p>18 subscription. They hit that and then they are</p> <p>19 presented with a help us make Match better and they</p> <p>20 continue cancellation.</p> <p>21 And then there is --</p> <p>22 A One second. I want to go back for a</p> <p style="text-align: right;">Page 158</p>

<p>1 second and look.</p> <p>2 Q Sure.</p> <p>3 A Okay. I'm now on the "before you go"</p> <p>4 page.</p> <p>5 Q Okay.</p> <p>6 A Now I'm on the offer.</p> <p>7 Q Then there is an offer for a discount.</p> <p>8 A Yep. I see that.</p> <p>9 Q And then what's next is a, what I will</p> <p>10 call an NPS survey. It's a net promoter score</p> <p>11 survey. You click that and then you are cancelled.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q Do you recognize this as the Match.com</p> <p>15 cancellation flow?</p> <p>16 A I haven't seen this one before, but it</p> <p>17 looks similar to the -- what I saw was the latest</p> <p>18 version of the cancellation form. So the only</p> <p>19 difference with this one is I did not see any</p> <p>20 cancellation flow where it began with someone</p> <p>21 entering their password to get to the Match home</p> <p>22 page where the year is.</p> <p style="text-align: right;">Page 159</p>	<p>1 A But I'm willing to call this zero through</p> <p>2 10 how likely would it be for you to recommend</p> <p>3 Match.com to a friend, if you want to call that an</p> <p>4 NPS for purposes of the deposition, that's fine.</p> <p>5 Q Okay. And is there anything about those</p> <p>6 three pages, the save offer or the net promoter</p> <p>7 score survey question or the why you are canceling</p> <p>8 that you believe renders this flow complex or</p> <p>9 confusing?</p> <p>10 MR. AIJAZ: Objection. Asked and</p> <p>11 answered. Chad, he answered the question.</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q I didn't hear the answer. I didn't hear.</p> <p>14 MR. AIJAZ: Bikram, go ahead. You can</p> <p>15 answer.</p> <p>16 A Yes.</p> <p>17 Q And what's your basis for saying that?</p> <p>18 That it adds unnecessary time?</p> <p>19 A So I went over this in my first session,</p> <p>20 but with respect to those particular pages, when you</p> <p>21 have a consumer that hits "cancel subscription" on</p> <p>22 the page after the password, you get to the first</p> <p style="text-align: right;">Page 161</p>
<p>1 So that was different. But other than</p> <p>2 that, it does appear to be similar to the later, the</p> <p>3 last iteration of the cancellation flow that I</p> <p>4 viewed in preparation for my testimony.</p> <p>5 Q And this flow has both what you and I can</p> <p>6 refer to as a save offer. It's an offer to save</p> <p>7 subscribe for a discounted rate; correct?</p> <p>8 A Yes. It does have that. Yes.</p> <p>9 Q And it has a survey question that says</p> <p>10 essentially why are you leaving, why are you</p> <p>11 canceling your subscription, correct? And it has a</p> <p>12 number of options; right?</p> <p>13 A I mean it has a survey. Yeah. It asks</p> <p>14 what's the primary reason that you are looking to</p> <p>15 cancel your subscription. That's the first survey</p> <p>16 page.</p> <p>17 Q And then there is a net promoter score</p> <p>18 page. Which I understand you weren't previously</p> <p>19 familiar in the prior session with the phrase NPS or</p> <p>20 net promoter score, but do you --</p> <p>21 A That's right.</p> <p>22 Q Okay. Have you --</p> <p style="text-align: right;">Page 160</p>	<p>1 page, which is the survey. And first of all, there</p> <p>2 is confusing language there, because the consumer</p> <p>3 has just clicked "cancel subscription" and then you</p> <p>4 have this language that's in large type at the top</p> <p>5 of the screen "before you go," and then you have a</p> <p>6 survey.</p> <p>7 And so some consumers could reasonably</p> <p>8 read that and conclude that they have cancelled</p> <p>9 their subscription because they clicked on something</p> <p>10 that says "cancel" and they are being presented a</p> <p>11 survey to collect some more information. There is</p> <p>12 not any indication that's prominent on this page</p> <p>13 that they still have steps to go.</p> <p>14 Then you do have the survey that does take</p> <p>15 time, it's something else a consumer would have to</p> <p>16 click through to get to cancellation. Then once you</p> <p>17 get to the next page -- and the other thing with</p> <p>18 this is sometimes in iterations of the cancel flow</p> <p>19 that I have seen in other formats, I think for most</p> <p>20 of these options, maybe not for the other that was</p> <p>21 clicked here, but for the other options that are</p> <p>22 presented, there is usually a second question, maybe</p> <p style="text-align: right;">Page 162</p>

<p>1 sometimes a third question that's presented, so</p> <p>2 consumers would have to wade through that as well.</p> <p>3 So it's not -- it's probably the fastest</p> <p>4 way you could answer this survey and get through it,</p> <p>5 with by clicking other. Then you get to the save</p> <p>6 offer, which is -- which in previous iterations this</p> <p>7 was actually quite confusing because it didn't have,</p> <p>8 the continue cancellation was not a button, it was a</p> <p>9 link that said "no thanks, I want to resign." Far</p> <p>10 less prominent than the button on the left to get,</p> <p>11 to accept the save offer.</p> <p>12 Then at some point it just said</p> <p>13 "continue," which also was confusing because in the</p> <p>14 context of the page I think reasonable consumers</p> <p>15 could wonder whether continue means you're</p> <p>16 continuing with the save offer or whatever. Now it</p> <p>17 says "continue cancellation," so that has improved</p> <p>18 since the earlier iterations.</p> <p>19 Then, the consumer would -- and my</p> <p>20 understanding is not every consumer received a safe</p> <p>21 offer, but many do. Then you get to the page where</p> <p>22 you have the NPS as you call it. You know, it has</p> <p style="text-align: right;">Page 163</p>	<p>1 speculation.</p> <p>2 A I don't think that the FTC's negative</p> <p>3 option policy statement would necessarily prohibit</p> <p>4 like a save offer or a survey, but it depends on the</p> <p>5 execution, and I think it has to be looked at in</p> <p>6 context.</p> <p>7 Q I understand. And when you say you are</p> <p>8 looking at it in context, just to reiterate your</p> <p>9 prior testimony, the FTC presently has no empirical</p> <p>10 evidence that a consumer survey, a study, a</p> <p>11 heuristic analysis, that demonstrates that in</p> <p>12 context these three pages would amount to an</p> <p>13 unreasonable delay in cancellation?</p> <p>14 MR. AIJAZ: Objection. Misstates prior</p> <p>15 testimony and to the extent it relies on the opinion</p> <p>16 of an expert, those are due on 11/4. But to the</p> <p>17 extent your opinion relies on it, you can disclose</p> <p>18 that.</p> <p>19 A So in my preparation I was not, no expert</p> <p>20 analysis of the ease of use of the cancellation</p> <p>21 flow, that did not, is not something I saw in my</p> <p>22 preparation. I also still don't know what the word</p> <p style="text-align: right;">Page 165</p>
<p>1 "tell us more." Which in the context of the prior</p> <p>2 page, it says "before you go." A consumer may say,</p> <p>3 okay, well, they just want more survey stuff, they</p> <p>4 may have already thought that they cancelled.</p> <p>5 I know in prior iterations it was actually</p> <p>6 another text box here that some more information was</p> <p>7 sought, but the text box I think was stopped after</p> <p>8 2017. Then you continue cancellation. And then</p> <p>9 finally you get to the page which I understand is</p> <p>10 the actual completion of the cancellation flow that</p> <p>11 says your subscription has been cancelled.</p> <p>12 So all of those things in terms of the</p> <p>13 multiple pages, the language on the pages that</p> <p>14 suggest that a consumer has already cancelled and</p> <p>15 the time it takes to do all those things and the</p> <p>16 necessity of those things, cancellation, is what</p> <p>17 makes this a not simple mechanism, among other</p> <p>18 things.</p> <p>19 Q Okay. You would agree that unless a save</p> <p>20 offer or surveys amount to unreasonable delay, they</p> <p>21 are not prohibited under FTC guidance; correct?</p> <p>22 MR. AIJAZ: Objection. Calls for</p> <p style="text-align: right;">Page 164</p>	<p>1 "heuristic" means. I did not look that up since the</p> <p>2 first session. So I'm noting that there is a word</p> <p>3 in your question that I don't know what it means.</p> <p>4 Oh. The other point I was going to make</p> <p>5 is that what we do know is that a lot of consumers</p> <p>6 and Match employees did note that they found that</p> <p>7 this process was complicated and difficult and time</p> <p>8 consuming and included unnecessary survey questions.</p> <p>9 Q Would you have any basis to dispute that</p> <p>10 Match has a legitimate reason at the time of</p> <p>11 cancellation to understand or to assess how likely a</p> <p>12 consumer would be to recommend Match to a friend?</p> <p>13 MR. AIJAZ: Objection. Relevancy and</p> <p>14 outside the scope of the notice.</p> <p>15 A What do you mean by at the time of</p> <p>16 cancellation? Before cancellation?</p> <p>17 Q No.</p> <p>18 A No. I don't think --</p> <p>19 Q All right. So have you ever run a</p> <p>20 business, sir?</p> <p>21 MR. AIJAZ: Objection. Outside the scope</p> <p>22 of the notice and argumentative most likely.</p> <p style="text-align: right;">Page 166</p>


<p>1 BY MR. HUMMEL:</p> <p>2 Q Okay. My question is have you ever run a</p> <p>3 business?</p> <p>4 A I'll say no.</p> <p>5 Q Okay. And so you would have no real world</p> <p>6 experience in assessing whether it would be</p> <p>7 important to a business to understand whether their</p> <p>8 customers are likely to recommend that business to a</p> <p>9 friend?</p> <p>10 MR. AIJAZ: Objection. Relevancy,</p> <p>11 misstates testimony, assumes facts not in evidence.</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q You can answer the question, sir.</p> <p>14 A That does misstate my testimony. That's</p> <p>15 not what I said.</p> <p>16 Q I understand. It may have misstated it,</p> <p>17 but I asked a different question.</p> <p>18 MR. AIJAZ: There is no question pending.</p> <p>19 THE WITNESS: Could you repeat the</p> <p>20 question?</p> <p>21 MR. HUMMEL: Could I have the question</p> <p>22 read back, please, Robert?</p> <p style="text-align: right;">Page 167</p>	<p>1 necessary to get an NPS done before, to effectuate a</p> <p>2 cancellation? It's not necessary. It doesn't mean</p> <p>3 that the company can't try to get that information</p> <p>4 after cancellation is done.</p> <p>5 Q Yeah, but there is nothing in the FTC</p> <p>6 guidance that says that you can only ask necessary</p> <p>7 questions relevant to the cancellation process in</p> <p>8 the context of a cancellation flow; correct?</p> <p>9 MR. AIJAZ: Objection. Outside the scope</p> <p>10 of the notice and not relevant.</p> <p>11 A I think there is some stuff about not</p> <p>12 including unnecessary steps in the cancellation.</p> <p>13 But I didn't memorize it, but I think that concept</p> <p>14 is there.</p> <p>15 Q What the guidance actually says is, quote,</p> <p>16 "to ensure compliance with the simple cancellation</p> <p>17 mechanism requirement, negative option sellers</p> <p>18 should not subject consumers to new offers or</p> <p>19 similar attempts to save the negative option</p> <p>20 arrangement that impose unreasonable delays on</p> <p>21 consumer's cancellation efforts."</p> <p>22 Footnote; "while a request to consider an</p> <p style="text-align: right;">Page 169</p>
<p>1 - - -</p> <p>2 (Whereupon the following portion of the</p> <p>3 testimony was repeated by the Court Reporter:</p> <p>4 QUESTION: Okay. And so you would have</p> <p>5 no real world experience in assessing whether it</p> <p>6 would be important to a business to understand</p> <p>7 whether their customers are likely to recommend that</p> <p>8 business to a friend?)</p> <p>9 - - -</p> <p>10 BY MR. HUMMEL:</p> <p>11 Q Are you able to answer that question?</p> <p>12 MR. AIJAZ: Same objections.</p> <p>13 A It may be important to a business to do</p> <p>14 that, but it's something that they can do after</p> <p>15 cancellation is complete.</p> <p>16 Q But nowhere in FTC guidance is that</p> <p>17 required; correct?</p> <p>18 A Is that specifically addressed in FTC</p> <p>19 guidance? I don't think so, but I think it falls</p> <p>20 within the principles laid out in FTC guidance.</p> <p>21 I think it's also our principle of what</p> <p>22 constitutes a simple mechanism of canceling. Is it</p> <p style="text-align: right;">Page 168</p>	<p>1 offer or discount would not amount to an</p> <p>2 unreasonable delay, multiple requests for a consumer</p> <p>3 to listen to additional offers, lengthy pitches or</p> <p>4 ignoring a consumer's request to decline further</p> <p>5 offers could amount to unreasonable delay."</p> <p>6 Now you would agree, sir, that in this</p> <p>7 flow there is only one request to consider a</p> <p>8 discount; correct?</p> <p>9 MR. AIJAZ: Objection. Form and misstates</p> <p>10 the policy statement.</p> <p>11 MR. HUMMEL: I read it verbatim.</p> <p>12 MR. AIJAZ: But not all of it relating to</p> <p>13 cancellation. Bikram, you can answer if you are</p> <p>14 able.</p> <p>15 A Yes. You are correct. There is only one</p> <p>16 save offer in this cancellation flow that is Exhibit</p> <p>17 6.</p> <p>18 Q And is it the FTC's position in this case</p> <p>19 that that save offer amounts to unreasonable delay?</p> <p>20 A In context, yes.</p> <p>21 Q What empirical evidence do you have to</p> <p>22 support that contention?</p> <p style="text-align: right;">Page 170</p>

<p>1 A I would say that the large number of 2 complaints that Match received about consumers who 3 thought they cancelled but were charged auto-renew; 4 the persistency of those complaints, Match employees 5 noting that that was one of the highest sources of 6 complaints that Match Customer Care received. I 7 think that's evidence.</p> <p>8 Q You recall a high number of complaints 9 about the save offer?</p> <p>10 A About the save offer? I don't recall 11 whether I saw complaints that Match received 12 relating to the save offer. I do remember that 13 Match employees noted that that page was confusing.</p> <p>14 MR. HUMMEL: Taylor, could you please put 15 in the shared exhibit folder tabs, tab 83?</p> <p>16 MS. BRAGG: Yes. And by the way, the 17 order we received earlier has been marked as 221.</p> <p>18 MR. HUMMEL: I think that will be marked 19 as Exhibit 11.</p> <p>20 (Bandy Exhibit Number 11 21 was marked for identification.)</p> <p>22 MR. HUMMEL: While she is doing that,</p> <p style="text-align: right;">Page 171</p>	<p>1 A Yeah. I did not look at that Reg 2 beforehand, I did not look into what the law is 3 relating to guides. So I see what it says there, 4 but I can't independently -- it was not part of my 5 preparation. To me it was not within the scope of 6 the topics for me to understand, you know, what are 7 the legal implications of the dot come disclosures 8 guide.</p> <p>9 Q Are the FTC's -- is the FTC's enforcement 10 policy statement regarding negative option marketing 11 a guide or a rule?</p> <p>12 MR. AIJAZ: Objection. Calls for a legal 13 conclusion, outside the scope of the notice.</p> <p>14 A I didn't look into that for preparation 15 for my testimony today, but my guess is that it's 16 not a rule.</p> <p>17 Q Okay. And my question here, since you are 18 the litigation chief for the Consumer Protection 19 Bureau, in the context of Footnote 5, what is an 20 enforcement action?</p> <p>21 MR. AIJAZ: Objection. Calls for a legal 22 conclusion and objection as to Bikram testifying in</p> <p style="text-align: right;">Page 173</p>
<p>1 could you open Exhibit 8, please?</p> <p>2 THE WITNESS: Okay. I'm on Exhibit 8.</p> <p>3 MR. HUMMEL: Exhibit 8?</p> <p>4 THE WITNESS: Yes. I have it open.</p> <p>5 (Bandy Exhibit Number 8 6 was marked for identification.)</p> <p>7 BY MR. HUMMEL:</p> <p>8 Q Could you look, please -- do you recognize 9 this exhibit as the FTC's dot com disclosure 10 guidelines?</p> <p>11 A I see that's what it is. I did not review 12 this in preparation for my testimony today.</p> <p>13 Q Okay. Could I ask you to turn, please, to 14 page two, Footnote 5?</p> <p>15 A Okay. I see that.</p> <p>16 Q All right. Footnote 5, it defines what a 17 guide is as opposed to a rule, which is defined in 18 Footnote 4. Can you confirm for me, please, that 19 Footnote 5 defines what a guide is for purpose of, 20 for purposes of the FTC Act?</p> <p>21 MR. AIJAZ: Objection. Calls for a legal 22 conclusion.</p> <p style="text-align: right;">Page 172</p>	<p>1 his capacity as litigation chief. He is here as a 2 30(b)(6) witness. You can answer.</p> <p>3 A I read this an enforcement action would be 4 either a federal court lawsuit against someone for a 5 violation or an administrative proceeding to force 6 someone who is violating the FTC Act or any of the 7 other laws enforced by the commission.</p> <p>8 Q You don't read enforcement action to mean 9 only administrative proceeding?</p> <p>10 A No, I don't. I would not read it that 11 way.</p> <p>12 (Bandy Exhibit Number 9 13 was marked for identification.)</p> <p>14 BY MR. HUMMEL:</p> <p>15 Q Could you open what's been marked as 16 Exhibit 9?</p> <p>17 A Yes. I have it open.</p> <p>18 Q All right. And if you could look at the 19 last page of Exhibit 9, it is the verification of 20 interrogatory answers signed by a Matthew J. 21 Wilshire.</p> <p>22 A Okay. I see it.</p> <p style="text-align: right;">Page 174</p>

<p>1 cancellation is simple for purposes of ROSCA.</p> <p>2 Q Isn't it true, sir, that a cancellation</p> <p>3 flow that includes steps that are objectively</p> <p>4 unnecessary to cancel, if those steps do not cause</p> <p>5 undue delay, does not violate ROSCA?</p> <p>6 MR. AIJAZ: Objection. Calls for a legal</p> <p>7 conclusion, calls for a hypothetical, speculation.</p> <p>8 A I think you are trying to read that or</p> <p>9 restate that footnote from the negative option</p> <p>10 policy statement. So I mean I feel like it's</p> <p>11 testing my memory of like what the negative option</p> <p>12 policy statement words are.</p> <p>13 Q Let me interrupt you. I'm really not.</p> <p>14 Let me rephrase the question and withdraw that one.</p> <p>15 Here is the question.</p> <p>16 So the FTC promulgates these negative</p> <p>17 option guidelines, right, and they are supposed to</p> <p>18 provide some meat around the bones of a single word</p> <p>19 that the statute uses, which is "simple," right?</p> <p>20 They are supposed to do that? Would you agree with</p> <p>21 me on that?</p> <p>22 MR. AIJAZ: Objection. Calls for facts</p> <p style="text-align: right;">Page 195</p>	<p>1 Q How is a business supposed to know what it</p> <p>2 can or can't do with respect to a cancellation flow</p> <p>3 without objective guidance from Congress or the</p> <p>4 Federal Trade Commission?</p> <p>5 MR. AIJAZ: Objection. Assumes facts not</p> <p>6 in evidence and outside the scope of the notice.</p> <p>7 A So I think that there are -- first of all,</p> <p>8 simple, it's a plain English word, and I do think</p> <p>9 the negative option policy statement gives some</p> <p>10 guidance as to what kinds of things businesses</p> <p>11 should be thinking about when they are designing a</p> <p>12 cancellation mechanism.</p> <p>13 And I think the general gist of what the</p> <p>14 negative option policy statement is getting at, and</p> <p>15 it's not exclusive, but it's providing some</p> <p>16 guidance, some meat on the bones as you said</p> <p>17 earlier, is that it has to be easy to use, easy to</p> <p>18 find, a mechanism that when a consumer decides that</p> <p>19 they want to cancel, that they can do that without</p> <p>20 too much difficulty.</p> <p>21 I think that that's built into the term</p> <p>22 "simply," I think the commission has put some meat</p> <p style="text-align: right;">Page 197</p>
<p>1 not in evidence.</p> <p>2 BY MR. HUMMEL:</p> <p>3 Q I'm just trying to set the stage for a</p> <p>4 question and it's really not rhetorical. How in the</p> <p>5 world is a business supposed to know how to</p> <p>6 construct a cancellation flow and whether they</p> <p>7 violate ROSCA or not, that requires a simple</p> <p>8 cancellation mechanism, if nowhere in the guidelines</p> <p>9 is it prohibited to have objectively unnecessary</p> <p>10 steps if it doesn't cause undue delay? How is a</p> <p>11 business supposed to conduct itself?</p> <p>12 MR. AIJAZ: Objection. Form and outside</p> <p>13 the scope of the notice.</p> <p>14 Q We are in like Koska land.</p> <p>15 A I think --</p> <p>16 MR. AIJAZ: Objection. Argumentative.</p> <p>17 MR. HUMMEL: It is. I withdraw that</p> <p>18 comment.</p> <p>19 BY MR. HUMMEL:</p> <p>20 Q Can you answer my question, please?</p> <p>21 A I think it might help for you to point me</p> <p>22 to where the question was.</p> <p style="text-align: right;">Page 196</p>	<p>1 on the bones through the guides. There have been</p> <p>2 some -- there is some case law on ROSCA, there is</p> <p>3 some enforcement actions that have been brought,</p> <p>4 that we talked about the ABCmouse one that provides</p> <p>5 some guidance on that. So there are plenty of</p> <p>6 resources that a business can turn to to get some</p> <p>7 guidance on that.</p> <p>8 And also specifically here I think you had</p> <p>9 a lot of Match employees that had identified ways to</p> <p>10 make, that identified that the cancellation flow was</p> <p>11 a mess, was confusing, and they offered ideas for</p> <p>12 how they could make the process simpler.</p> <p>13 Q I have a number of questions that followed</p> <p>14 up on that. One; you are not aware of a single case</p> <p>15 that defined "simple" for purposes of a company's</p> <p>16 compliance with ROSCA, are you? A single judicial</p> <p>17 decision?</p> <p>18 MR. AIJAZ: Objection. Not in the scope</p> <p>19 of testimony. Not in the scope of the notice.</p> <p>20 A I didn't look into that, but I want to say</p> <p>21 that maybe the summary judgment decision in my life</p> <p>22 may have addressed it, but I'm not certain about</p> <p style="text-align: right;">Page 198</p>

<p>1 that.</p> <p>2 Q Okay. The second question. How is a</p> <p>3 company supposed to know, Match in particular, what</p> <p>4 an objectively unnecessary step is in the</p> <p>5 cancellation flow if you can't even define it?</p> <p>6 MR. AIJAZ: Objection. Misstates</p> <p>7 testimony, outside the scope of the notice.</p> <p>8 A Yeah, I didn't say that I couldn't define</p> <p>9 it.</p> <p>10 Q Okay. Please define what an objectively</p> <p>11 unnecessary step to cancel is.</p> <p>12 A It's a step that a reasonable person would</p> <p>13 not feel was necessary to cancel.</p> <p>14 Q And that would include a save offer?</p> <p>15 MR. AIJAZ: Objection. Calls for a legal</p> <p>16 conclusion.</p> <p>17 Q Survey?</p> <p>18 MR. AIJAZ: Objection. Calls for a legal</p> <p>19 conclusion. Form. Wasn't even a question.</p> <p>20 A As I said before, probably, but not sure.</p> <p>21 But I think a survey would probably be objectively</p> <p>22 unnecessary to cancel.</p> <p style="text-align: right;">Page 199</p>	<p>1 testimony like which of these are ROSCA-related,</p> <p>2 like not, you know, within simple mechanism and</p> <p>3 cancel and which of these would be, you know,</p> <p>4 fencing in because they go beyond what ROSCA</p> <p>5 prohibits. I didn't parse it out that way because I</p> <p>6 don't know that it mattered much for my preparation</p> <p>7 in that its either a violation of ROSCA or it's</p> <p>8 fencing in.</p> <p>9 MR. HUMMEL: Taylor, could you please mark</p> <p>10 tab 188? The next in order will be Exhibit 13, and</p> <p>11 Mr. Bandy, you will need to refresh.</p> <p>12 (Bandy Exhibit Number 13</p> <p>13 was marked for identification.)</p> <p>14 THE WITNESS: I just refreshed and it</p> <p>15 didn't come up.</p> <p>16 MR. HUMMEL: Yeah. It takes a minute.</p> <p>17 THE WITNESS: Okay. I see it. I have the</p> <p>18 Exhibit 13 open.</p> <p>19 BY MR. HUMMEL:</p> <p>20 Q Okay. Do you recognize that, Exhibit 13?</p> <p>21 Is it a letter that counsel from Match sent to the</p> <p>22 FTC on August 6, 2019?</p> <p style="text-align: right;">Page 201</p>
<p>1 Q And so it's the FTC's position now, after</p> <p>2 they have sued Match and after Match designed its</p> <p>3 flow, the FTC's position now, that a step that is</p> <p>4 objectively unnecessary to cancel violates ROSCA?</p> <p>5 MR. AIJAZ: Objection. Misstates the</p> <p>6 testimony and assumes facts not in evidence.</p> <p>7 A Yeah, that's not, that's not what I said</p> <p>8 and that's not what this Order means. The Order is</p> <p>9 not purporting to define what user isn't a violation</p> <p>10 of ROSCA, because in any Order you can have some</p> <p>11 fencing in, which is conduct that may not</p> <p>12 necessarily be, violate the law, but is nonetheless</p> <p>13 enjoined because the defendant's actions warrant</p> <p>14 certain steps that maybe go beyond just simple</p> <p>15 compliance with law to ensure that future violations</p> <p>16 of law do not occur.</p> <p>17 Q So again, going back to Exhibit 12, page 6</p> <p>18 and 7, capital A, little subsection C, is it your</p> <p>19 testimony that that's fencing in?</p> <p>20 MR. AIJAZ: Objection. Calls for a legal</p> <p>21 conclusion.</p> <p>22 A So I didn't parse in preparation of my</p> <p style="text-align: right;">Page 200</p>	<p>1 A I did review this letter in preparation</p> <p>2 for my testimony, so yes, I have seen this letter</p> <p>3 before.</p> <p>4 Q Right. And have I correctly described the</p> <p>5 letter? It's a letter that Match's counsel then,</p> <p>6 Linda Goldstein, sent to the FTC on August 6, 2019?</p> <p>7 A Yes.</p> <p>8 Q Did the FTC receive that letter?</p> <p>9 A Yes.</p> <p>10 MR. HUMMEL: Taylor could you mark tab 189</p> <p>11 as next in order, Exhibit 14?</p> <p>12 (Bandy Exhibit Number 14</p> <p>13 was marked for identification.)</p> <p>14 THE WITNESS: Let me know when you upload</p> <p>15 it and I will know when to refresh.</p> <p>16 MS. BRAGG: It should be there now.</p> <p>17 THE WITNESS: It is.</p> <p>18 BY MR. HUMMEL:</p> <p>19 Q Do you recognize Exhibit 14, sir, as a</p> <p>20 letter sent by counsel for Match Group, Inc. to the</p> <p>21 FTC on May 20, 2022?</p> <p>22 A I did not review this letter in</p> <p style="text-align: right;">Page 202</p>

<p>1 preparation for my testimony. This is the first 2 time I'm seeing this letter.</p> <p>3 Q On behalf of the FTC --</p> <p>4 A Would you like me to read it?</p> <p>5 Q This letter would have been within the 6 scope of I think topic three. Can you -- yeah. You 7 can read it and tell me if the FTC received this 8 letter from Match's counsel on May 20, 2022.</p> <p>9 MR. AIJAZ: Chad, I'm going to have 10 standing objections to both 13 and 14 as 11 inadmissible as part of settlement negotiations. 12 And, again, those would be standing for 13 and 14.</p> <p>13 THE WITNESS: Okay. I've read the letter. 14 BY MR. HUMMEL:</p> <p>15 Q Do you have any reason to believe the FTC 16 did not receive this letter from Match counsel on 17 May 20, 2022?</p> <p>18 A I don't know whether they did or not. I 19 have never seen this letter before. There was no 20 discussion of this letter. So I can't say one way 21 or the other.</p> <p>22 Q In preparation for your testimony on the Page 203</p>	<p>1 MR. AIJAZ: Yeah. As I understood it, you 2 asked about our conversations.</p> <p>3 MR. HUMMEL: All I asked was is it true 4 that in preparation for your deposition here on the 5 three notice topics you were not shown this letter?</p> <p>6 MR. AIJAZ: Can you just say what this 7 letter is?</p> <p>8 MR. HUMMEL: Yeah. Sure. It's Exhibit 9 14.</p> <p>10 MR. AIJAZ: Bikram, you can answer that 11 question.</p> <p>12 THE WITNESS: As I stated before, I did 13 not see this letter as part of my preparation. 14 First time I'm seeing this letter.</p> <p>15 MR. HUMMEL: All right. Taylor, could you 16 mark tab 205, please?</p> <p>17 MS. BRAGG: That will be 15. I'm adding 18 it now.</p> <p>19 (Bandy Exhibit Number 15 20 was marked for identification.)</p> <p>21 MS. BRAGG: It should be there now.</p> <p>22 MR. HUMMEL: Taylor, you can go ahead Page 205</p>
<p>1 topic dealing with permanent discontinuation or the 2 FTC's allegation that Match is violating or about to 3 violate the FTC Act through the guarantee program or 4 the chargeback policy, are you telling me that FTC 5 counsel did not show you a letter sent by Match's 6 counsel stating that there are no plans or 7 intentions to either, one, offer a guarantee program 8 that allows consumers who meet certain terms and 9 conditions to extend their subscriptions without 10 cost, as alleged in Count III, or bar consumers who 11 have unsuccessfully disputed charges through their 12 financial institutions, including preventing them 13 from using paid Match.com subscription services, as 14 alleged in Count IV?</p> <p>15 MR. AIJAZ: Objection. Don't answer. You 16 asked about attorney/client privilege. Also 17 misstates the scope of the notice. You didn't 18 mention anything about permanent discontinuation in 19 your notice, but you referenced that in your 20 question.</p> <p>21 MR. HUMMEL: Are you instructing him not 22 to answer on attorney/client privilege grounds? Page 204</p>	<p>1 while I'm asking him about tab or what will be 2 Exhibit 15, go ahead and mark 206, 209, 207. Okay?</p> <p>3 THE WITNESS: Okay. I have 15 open and I 4 have reviewed it.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q Have you seen Exhibit 15 before?</p> <p>7 A I don't think so.</p> <p>8 Q Exhibit 15 is an internal email within 9 Match that says: "All, the following has been added 10 to Daily Updates in RNT. 6 Month Guarantee No 11 Longer Available. (April 15, 2019)."</p> <p>12 Did I read that correctly?</p> <p>13 A I was looking at the document, I wasn't 14 paying attention to whether you read it accurately 15 or not, but let me do this. This document is an 16 email that says 6 month guarantee no longer 17 available, in parentheses, April 15, 2019.</p> <p>18 Q Okay. And the FTC doesn't dispute that 19 the 6-month guarantee was discontinued effective mid 20 2019; correct?</p> <p>21 MR. AIJAZ: Objection. Assumes facts not 22 in evidence. Page 206</p>

<p>1 signing happens on a separate track than a motion to 2 compel further answers. In other words, we are not 3 conceding this deposition is concluded because we 4 may have disputes, but we can talk about that 5 off-line. And, Mr. Bandy, I appreciate your time 6 and preparation here and we may have some disputes 7 that I will raise with litigation counsel. Okay -- 8 THE WITNESS: That works. Thank you. 9 VIDEOGRAPHER: The time now is 3:57 p.m. 10 This concludes the testimony given by Bikram Bandy. 11 Thank you, sir. 12 (Whereupon, at 3:57 p.m., the 13 deposition of BIKRAM BANDY 14 was concluded.) 15 * * * * * 16 17 18 19 20 21 22</p> <p style="text-align: right;">Page 219</p>	<p>1 UNITED STATES OF AMERICA) 2 ss: 3 DISTRICT OF COLUMBIA) 4 I, ROBERT M. JAKUPCIAK, an RPR and Notary 5 Public within and for the District of Columbia do 6 hereby certify: 7 That the witness whose deposition is 8 hereinbefore set forth, was duly sworn and that the 9 within transcript is a true record of the testimony 10 given by such witness. 11 I further certify that I am not related to 12 any of these parties to this action by blood or 13 marriage and that I am in no way interested in the 14 outcome of this matter. 15 IN WITNESS WHEREOF, I have hereunto set my 16 hand this 14th d  17 18 19 20 21 My Commission Expires: Job No. TX5554644 22 February 29, 2024</p> <p style="text-align: right;">Page 221</p>
<p>1 A C K N O W L E D G M E N T O F D E P O N E N T 2 3 4 I, BIKRAM BANDY, do hereby acknowledge I 5 have read and examined the foregoing pages of 6 testimony, and the same is a true, correct and 7 complete transcription of the testimony given by 8 me, and any changes or corrections, if any, appear 9 in the attached errata sheet signed by me. 10 11 12 13 14 15 16 17 18 19 20 _____ Date BIKRAM BANDY 21 Job No. TX5554644 22</p> <p style="text-align: right;">Page 220</p>	<p>1 M. HASAN AIJAZ, ESQUIRE 2 maijaz@ftc.gov 3 November 14, 2022 4 RE: Federal Trade Commission v. Match Group, Inc., Et Al. 5 10/31/2022, Bikram Bandy , Corp Rep - Vol 2 (#5554644) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 errata-tx@veritext.com. 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p> <p style="text-align: right;">Page 222</p>

25 (Pages 219 - 222)

<p>1 Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>2 Bikram Bandy , Corp Rep - Vol 2 (#5554644)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Bikram Bandy , Corp Rep - Vol 2 _____ Date _____</p> <p>25 _____</p> <p style="text-align: right;">Page 223</p>	
<p>1 Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>2 Bikram Bandy , Corp Rep - Vol 2 (#5554644)</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Bikram Bandy , Corp Rep - Vol 2, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10 _____</p> <p>11 _____</p> <p>12 Bikram Bandy , Corp Rep - Vol 2 _____ Date _____</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 NOTARY PUBLIC</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p> <p style="text-align: right;">Page 224</p>	

26 (Pages 223 - 224)

EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CASE NO. 3:19-CV-02281-K

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

MATCH GROUP, INC., a
corporation, and MATCH GROUP,
LLC, formerly known as
MATCH.COM, LLC, a limited
liability company,

Defendants.

_____/

1001 Brickell Bay Drive
Miami, Florida
Friday, January 13, 2023
9:00 a.m. to 1:08 p.m.

VIDEOTAPED DEPOSITION OF GREG BLATT

Taken before Marlene Gutierrez, Notary
Public, State of Florida at Large, pursuant to Notice of
Taking Deposition filed in the above cause.

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Page 1

<div>1 APPEARANCES:</div> <div>2 SARAH ZUCKERMAN, ESQ.</div> <div>3 JASON MOON, ESQ.</div> <div>4 Federal Trade Commission</div> <div>5 1999 Bryan Street</div> <div>6 Suite 2150</div> <div>7 Dallas, Texas 75201</div> <div>8 Szuckerman@ftc.gov</div> <div>9 On behalf of the Plaintiff.</div> <div>10</div> <div>11 CHAD S. HUMMEL, ESQ.</div> <div>12 Sidley Austin, LLP</div> <div>13 1999 Avenue of the Stars</div> <div>14 Los Angeles, California 90067</div> <div>15 Chummel@sidley.com</div> <div>16 On behalf of the Defendants.</div> <div>17</div> <div>18 ALSO PRESENT:</div> <div>19 JEANETTE TECKMAN</div> <div>20 SAMUEL KITHEN, Via Zoom</div> <div>21 ALEJANDRO MONTALVO, Videographer</div> <div>22</div> <div>23 -----</div> <div>24</div> <div>25</div> <div>Page 2</div>	<div>1 THE VIDEOGRAPHER: Good morning. We're now on</div> <div>2 the video record. This is the videotaped deposition</div> <div>3 of Greg Blatt in the matter of Federal Trade</div> <div>4 Commission versus Match Group, Inc. Today is</div> <div>5 Friday, January 13 of 2023 and the local time is</div> <div>6 9:05 a.m.</div> <div>7 At this time, Counsel, please state your appearance</div> <div>8 for the record, and after this, the court reporter</div> <div>9 will swear in the witness.</div> <div>10 MS. ZUCKERMAN: Sarah Zuckerman for the Federal</div> <div>11 Trade Commission.</div> <div>12 MR. MOON: Jason Moon, Federal Trade</div> <div>13 Commission.</div> <div>14 MR. HUMMEL: Chad Hummel. I represent the</div> <div>15 defendants, Match Group, Inc., and Match Group, LLC.</div> <div>16 MS. TECKMAN: Jeanette Teckman, in-house for</div> <div>17 Match.</div> <div>18 MS. ZUCKERMAN: On Zoom, we also have Samuel</div> <div>19 Kitchens; is that right?</div> <div>20 MR. HUMMEL: Uh-huh.</div> <div>21 MS. ZUCKERMAN: So --</div> <div>22 THE COURT REPORTER: Sir, would you raise your</div> <div>23 right hand, please.</div> <div>24</div> <div>25</div> <div>Page 4</div>
<div>1 I N D E X</div> <div>2</div> <div>3 Witness</div> <div>4 GREG BLATT</div> <div>5 Direct Examination By Ms. Zuckerman 5</div> <div>6 Cross-Examination By Mr. Hummel 125</div> <div>7 Redirect Examination By Ms. Zuckerman 140</div> <div>8</div> <div>9</div> <div>10 PLAINTIFF'S EXHIBITS</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 3</div>	<div>1 Thereupon --</div> <div>2 GREG BLATT</div> <div>3 was called as a witness by the Plaintiff and, having</div> <div>4 been first duly sworn, and responding, "I do," was</div> <div>5 examined and testified as follows:</div> <div>6 DIRECT EXAMINATION</div> <div>7 BY MS. ZUCKERMAN:</div> <div>8 Q Good morning, Mr. Blatt.</div> <div>9 A Good morning.</div> <div>10 Q I see Mr. Hummel is sitting next to you. Are</div> <div>11 you being represented by Mr. Hummel in connection with</div> <div>12 this deposition?</div> <div>13 A Yes.</div> <div>14 Q Okay. And moments ago, the court reporter swore</div> <div>15 you in. And you are under oath under the penalty of</div> <div>16 perjury. That means you're testifying as if you're in</div> <div>17 court in front of a judge or a jury.</div> <div>18 Do you understand?</div> <div>19 A I do.</div> <div>20 Q Okay. And do you agree to answer my questions</div> <div>21 truthfully today?</div> <div>22 A I do.</div> <div>23 Q Great. And for today's deposition the court</div> <div>24 reporter is taking down everything that is being said</div> <div>25 out loud, so it's important to get your record on -- as</div> <div>Page 5</div>

<p>1 A He would've been CEO of -- of the Match Group of 2 businesses. We hadn't created Match Group yet, but he 3 was responsible for our dating businesses. I don't 4 know what his title was. CEO of gaming, or CEO Match 5 businesses, or Match segment, or something like that. 6 And then when -- when -- the end of 2013, we created 7 Match Group as a formal entity, and then he was CEO of 8 that. 9 Q You said "we created." Who is "we"? 10 A IAC created it. 11 Q And then on the, sort of, middle of Page 2 12 there, from you, you sent an email on Monday, 13 April 22nd, 2013, at 9:03 p.m. to Michelle Watson, 14 Amarnath Thrombre, with Sam Yagan copied. It appears 15 Sam Yagan has OkCupid in parenthesis next to his name, 16 correct? 17 A Yeah, he -- he kept his -- he had been the CEO 18 of OkCupid before he was promoted to the CEO of Match 19 Group, and he kept his email address because that was 20 where people knew to reach him. 21 Q Okay. And in that email, you state: "I thought 22 we" -- with Adrian in parenthesis -- "were making 23 progress. No?" Question mark. 24 Did I read that correctly? 25 A You did.</p> <p style="text-align: right;">Page 122</p>	<p>1 again, Google fights a constant, and Facebook fights a 2 constant battle, and, you know, it's like hacking, you 3 know. There's always people trying to get in, and 4 you're trying to keep them out. 5 Q Was Adrian reporting to you -- 6 A No. 7 Q -- regarding -- 8 A No. 9 Q Was Sam Yagan reporting to you on Match.com 10 matters? 11 A Sam Yagan reported to me on all matters relating 12 to our dating businesses, so on Match, on People Media, 13 on Meetic. He was the CEO, and I was the CEO of IAC. 14 MR. MOON: You want to do a lunch break? We 15 talked about 45 minutes. 16 Will that work for you, Madam Court Reporter? 17 Okay. 18 MS. ZUCKERMAN: Let's go off the record. 19 THE VIDEOGRAPHER: All right. Going off the 20 video record. The time is 12:37. 21 (A break was taken from 12:37 p.m. to 22 12:48 p.m.) 23 THE VIDEOGRAPHER: We're now back on the video 24 record. The time is 12:49. Media Number 4. 25 MS. ZUCKERMAN: I will pass the witness at this</p> <p style="text-align: right;">Page 124</p>
<p>1 Q What did you mean by saying that? 2 A You know, we were under constant attack from 3 fraudsters, spammers, et cetera, right? And just like 4 if you go to your Gmail, right, it's got processes for 5 trying to filter out spam, right? You've got a spam 6 filter. Some of it gets through, right? New spammers 7 come up with new ways; they adjust their algorithm, 8 their fight. They're never a hundred percent able to 9 keep the spam out, right? Same thing here. 10 So we would get surges of fraudsters trying to 11 get by our controls, right, and sometimes it would get 12 worse, and sometimes it would get better based on 13 whether they developed -- it's almost like a freaking 14 Omicron variance or COVID variance, like, sometimes 15 your defenses are good; sometimes they're not good. 16 You're always playing catch up because they're always 17 finding new ways. This woman's complaint -- or this 18 man's complaint was that too many of the people she was 19 -- he was interacting with were fraudsters, and I was 20 expressing a belief that we've made significant 21 progress on that, and so I was frustrated that this 22 person had that experience. 23 And then I think Adrian goes on to explain that, 24 yes, we have, but then there's still lots who are 25 coming, and there was a constant battle. The same way,</p> <p style="text-align: right;">Page 123</p>	<p>1 time. 2 MR. HUMMEL: Thank you. 3 CROSS-EXAMINATION 4 BY MR. HUMMEL: 5 Q Mr. Blatt, good afternoon. I have a few 6 questions for you. My name is Chad Hummel, as you 7 know. I represent the defendants in the case that has 8 been brought by the Federal Trade Commission. 9 During the course of your testimony this morning 10 there was a distinction that you drew, and I want to 11 get nomenclature very clear. There is IAC and Match 12 Group, Inc., and at some point you referred to those as 13 holdings companies or corporate. Do you understand on 14 one side of the ledger there's that. Do you understand 15 that? 16 A Yes. 17 Q If in my questioning I refer to the holding 18 company, will you understand what I mean? 19 A Unless there's confusion about whether you mean 20 IAC or Match Group, I will understand it, yes. 21 Q Okay, good. And sometimes I think you refer to 22 that as corporate versus the business? 23 A Yes. 24 Q I may -- you may refer to corporate, but if 25 we're referring to holding company, corporate, IAC,</p> <p style="text-align: right;">Page 125</p>

<p>1 Match Group, Inc., we're talking about the holding 2 company entity? 3 A Yes. 4 Q Okay. And on the other side of the ledger, 5 there was Match.com which I think you referred to at 6 times as the business or the operating entity. Okay? 7 A Yes. Again, one clarification. 8 Q Sure. 9 A Whenever you throw Inc. or LLC at the back of 10 something, I have to protest because I don't remember 11 which is which. When I talk about Match Group, I think 12 of Match Group as synonymous with corporate and the 13 holding company. And I think of Match, Match.com, as 14 synonymous with the operating business or operating 15 company. Once you start affixing the legal suffix at 16 the end, I don't know which is which. 17 Q And is it correct to say that with respect to 18 your personal role, you worked at the operating company 19 level only from 2009 to 2010; is that right? 20 A Correct. 21 Q Okay. On all other times you were at the 22 holding company or the corporate level, correct? 23 A Correct. 24 Q All right. Now, with respect -- 25 A Sorry. With the exception of when I was CEO of</p> <p style="text-align: right;">Page 126</p>	<p>1 A No. 2 Q There was one complaint that they showed you 3 relating to the guarantee, as far as I know. Did the 4 holding company address, to your knowledge, the 5 complaint with respect to the guarantee? 6 A No. 7 Q Is it correct to say that all issues relating to 8 the guarantee at Match.com from 2010 on, to the best of 9 your knowledge, was designed, implemented, and changed 10 if at all, including the level of disclosure to 11 consumers, that was handled at the operating company 12 level? 13 A Yes. 14 Q Okay. Now, same with respect to the charge-back 15 policy. To your knowledge, did the holding company 16 ever design the charge-back policy for Match.com? 17 A To the extent of my understanding about the 18 charge-back policy, no. 19 Q That would've been a -- an operating company 20 level issue, correct? 21 A Yes. 22 Q All right. And again, I don't think you even 23 saw a single complaint about the charge-back policy in 24 all their questioning this morning, right? 25 A I don't recall seeing one, no.</p> <p style="text-align: right;">Page 128</p>
<p>1 Tinder, simultaneously with being at Match Group, where 2 I was the Tinder operating company not at the Match.com 3 operating company. 4 Q Tinder is not involved in this case. 5 A I understand. 6 Q Let's just talk about Match.com. The only time 7 you worked at the Match.com operating company level, 8 was 2009, 2010? 9 A Correct. 10 Q After that time, entirely holding company 11 corporate level? 12 A Correct. 13 Q All right. Now, with respect to the discrete 14 issues that are involved in this case, the guarantee, 15 the charge-back policy, and the cancellation flow, 16 those are the three things I am going to ask you about. 17 Okay? 18 A Okay. Have we discussed the charge-back policy? 19 Q I don't know, but it's an issue in the case, so 20 I want to ask you about it. Let's focus on the 21 guarantee first, all right? To your knowledge, did 22 you, at the holding company level, have any involvement 23 in the creation of the guarantee? 24 A No. 25 Q In the implementation of the guarantee?</p> <p style="text-align: right;">Page 127</p>	<p>1 Q All right. Do you recall ever, in your capacity 2 at the holding company level, dealing with issues 3 relating to Match.com's charge-back policy? 4 A I have no recollection of doing that. 5 Q Do you have any personal knowledge -- I think 6 she asked you this question -- but do you have any 7 personal knowledge of when the guarantee was 8 discontinued? 9 A I do not. Again, I knew that in 2009, it ceased 10 to be prominent, and I don't know whether and to what 11 extent it was used after that. 12 Q Did the holding company, to your knowledge, have 13 any role whatsoever in how the terms and conditions 14 with respect to the guarantee were disclosed on the 15 website? 16 A No. 17 Q To your knowledge, did the holding company have 18 any role whatsoever in determining how can consumers 19 who initiated a charge-back with respect -- with their 20 financial institution for a Match.com account were 21 treated? Did the holding company have any involvement, 22 to your knowledge? 23 A Not to my recollection or knowledge, no. 24 Q That was entirely at the operating level? 25 A Yes.</p> <p style="text-align: right;">Page 129</p>

<p>1 Q Now, the -- do you know whether or not the 2 charge-back policy at Match.com was ever changed over 3 time? 4 A I do not know. 5 Q Do you know if the charge-back policy as 6 challenged in the Complaint in this case was ever 7 eliminated or discontinued? 8 A I have been made aware in connection with this 9 deposition that something changed at some point, but 10 other than that, I have no knowledge of that, and I 11 don't know the specifics of what changes were made or 12 when they were made or anything else. 13 Q When you were at the -- in charge at the holding 14 company level did the question of changing the 15 charge-back policy for Match.com ever come to your 16 attention, to your recollection? 17 A Not to my recollection. 18 Q All right. Now, with respect to the web 19 cancellation flow, you understand, based on your review 20 of the allegations in this case, that the FTC is 21 contending that it was -- that the cancellation flow 22 online was not simple. You have that basic 23 understanding, right? 24 A I do. 25 Q At the holding company level, did -- well strike</p> <p style="text-align: right;">Page 130</p>	<p>1 morning one email exchange that related to your -- I 2 think it related to your desire to eliminate the use of 3 the .com and used some colorful language in connection 4 with that desire, right? 5 A Yes. 6 Q Maybe there's a suggestion that the FTC might 7 make in this case that somehow the holding company 8 approved ads or advertising for the -- for the 9 operating entity Match.com. Is that true? And if so, 10 or if not, can you explain when, if at all, did 11 advertising come to your attention at the holding 12 company level? 13 MS. ZUCKERMAN: Objection to form. 14 THE WITNESS: With respect to that particular 15 email, but that comment obviously really wasn't 16 about the advertising per se. It was about the 17 presentation of the company's names across all of 18 Match Group. So that was a Match Group-wide thing. 19 I did, however, as I said, one of the things that I 20 was involved in even at the Match Group level were 21 significant television marketing campaigns. So to 22 the extent that a company was going to spend, you 23 know, many millions of dollars on brand marketing in 24 the -- specifically television, which is what we 25 did -- I would be involved. Again, I don't think</p> <p style="text-align: right;">Page 132</p>
<p>1 that. 2 Did you ever become aware that anyone at the 3 holding company level had any involvement whatsoever in 4 the design of the online cancellation flow? 5 A I have no knowledge of that ever happening. 6 Q Did you ever have any involvement in designing 7 the cancellation flow? 8 A I didn't design anything. No, I did not. 9 Q Okay. And I think, in all the documents, the 10 maybe more than million documents in the case, the FTC 11 today showed you one document, I think, that showed a 12 complaint about the online cancellation flow. Did you 13 ever address, to your knowledge, ever, any consumer 14 complaints relating to Match.com cancellation flow? 15 A No. As I think I said earlier, I was aware that 16 cancellation/refund issue was one of the issues that 17 the company needed to deal with because of its ongoing 18 need to ferret out legitimate complaints or issues from 19 illegitimate ones due to -- and I knew that that 20 existed and it was something that was managed by 21 customer care and by product. But it never came to my 22 attention as a discrete matter that required my 23 attention or anything else. It was just one of the 24 hundreds of things that the company did. 25 Q Now, FTC counsel in this case showed you this</p> <p style="text-align: right;">Page 131</p>	<p>1 I -- I wouldn't call it a matter of approval; I 2 would call it involvement. People didn't present 3 ads to me for approval; instead, I would review 4 things that people were working on and would give 5 feedback about whether we wanted to present the 6 company this way or that way. And whether or not 7 that was the right amount of money or whether we 8 could afford to spend 40 million or 20 million on 9 the advertising, so it was -- it was probably the 10 area of operations that I was most involved in at 11 the holding company level because it's not 12 iterative, meaning if you go out and you develop a 13 marketing campaign, you've developed a marketing 14 campaign, you've spent millions of dollars and you 15 have to spend it. So that's one area where I was 16 involved in. Very different from the areas that 17 were raised in this case. 18 BY MR. HUMMEL: 19 Q With respect to Match.com, which we'll call it 20 the operating entity for now, to your knowledge, at the 21 holding company level, did you or the other executives 22 at the holding company level get involved in approving 23 specific ad copy? 24 A For television marketing? 25 Q Generally speaking.</p> <p style="text-align: right;">Page 133</p>

<p>1 A Again, I wouldn't -- I wouldn't try and 2 distinguish between copy and not copy on television 3 ads. We were involved in television ads. That is an 4 area -- that is one of the few areas of the operating 5 companies that I was involved in. 6 Q How about website design? 7 A Very rarely. Only if someone were -- you know, 8 from time to time people wanted to do controversial 9 campaigns, for instance, and they might come see, like, 10 are we okay with this risqué thing or this may cause 11 whatever. So I would opine on that sort of thing, but 12 I didn't approve regular copy for online marketing. 13 Q And what about the manner in which terms and 14 conditions were disclosed; was that ever addressed at 15 the holding company level? 16 A No, not to my knowledge. 17 Q To your knowledge, where was that addressed? 18 A At the operating company. 19 Q There were some questions asked about -- about 20 operating company executives, including you, overseeing 21 the business or the operating entity. What do you mean 22 by "overseeing"? 23 A Any time I use the word oversee, I like to think 24 of the board analogy, which is, it is not the 25 day-to-day operations of the company, it is approving Page 134</p>	<p>1 somehow in some respect he reported on some issues with 2 respect to the business. I think that's the word you 3 used. Would that have been day-to-day operations or on 4 big ticket items? 5 A Can you be more specific about what we're 6 talking about and when? 7 Q I can, except it was one of the last exhibits 8 that was referenced. 9 A I mean, there was a time when Sam Yagan ran 10 OkCupid, and he reported to me about things at OkCupid. 11 There was a time when he was CEO of Match Group, and I 12 was CEO of IAC, in that capacity, he was like -- and 13 again, when I was CEO of IAC, I had a number of direct 14 reports. I had the CEO the Match businesses. I had 15 the CEO of the search businesses, the CEO of the local 16 businesses, and they would report to me as I described, 17 like a board. 18 When I became executive chairman of Match Group 19 and Sam continued CEO of Match Group at the time, it 20 was a similar relationship. And then at some point, 21 Sam also became CEO of Match.com, the operating 22 company, for again, less than a year, I believe. But 23 in that capacity, he acted the same, which is he didn't 24 report to me on a different level of things than he 25 would have before. Page 136</p>
<p>1 significant -- significant actions or decisions that 2 can have significant impact on the company, usually in 3 the eyes of the people running the company, right? So 4 again, if a company wants to do an acquisition or 5 meaningfully change the product in a particular way or 6 do something that would cause profitability to tank 7 because they're investing significant money or the 8 financial plan for the company, that's something that 9 would go to -- that would be part of oversight. 10 Also, oversight involves evaluating the 11 performance of the senior executive at the company. 12 And deciding whether they're doing a good job running 13 the day-to-day because you're not running it, right, so 14 your job is to approve that person. 15 And then it's to be a sounding board. So 16 nothing prevented, in fact, it was encouraged for a CEO 17 at the operating company if they've got something that 18 they're wrestling with or something that they'd like 19 guidance on, they can obviously bring whatever they 20 wanted but that was at their discretion. 21 Q Near the end of the deposition session with 22 FTC's lawyer, you mentioned a man named Sam Yagan, and 23 he's -- do you remember that? 24 A I remember talking about Sam Yagan. 25 Q Okay. And I think the testimony was that Page 135</p>	<p>1 Q Did he report to you on all dating sites and 2 businesses at some point? 3 A Yes, from the time he became CEO of the Match 4 businesses and sometime in 2012 until the end of 2015. 5 Q All right. Now, FTC counsel showed you 6 Exhibit 7 which is a deck that was prepared, and it's 7 entitled "Not Just Another Broken Window - Account 8 Settings Redesign." I think you testified you never 9 saw this before. 10 A To the best of my recollection, I never saw it. 11 Q It appears to be a one-person suggestion for a 12 redesign of the cancellation flow. Did that issue, a 13 redesign of the cancellation flow, ever reach your 14 level, to your knowledge? 15 A No, no. And I only saw the page that wasn't 16 really redesign, but I take your word for it that 17 there's a redesign in there. 18 Q Going back to Mr. Yagan. To your knowledge, was 19 he ever reporting to you about the day-to-day 20 operations of any of the businesses, or is it more 21 macro level? 22 A Always macro level. He was that CEO of a 23 business. They didn't report on the day-to-day things. 24 They were the end report on day-to-day operations. 25 Q All right. Let me show you what was marked as Page 137</p>



<p>1 CERTIFICATE OF OATH</p> <p>2 STATE OF FLORIDA:</p> <p>3 : SS</p> <p>4 COUNTY OF DADE:</p> <p>5 I, Marlene Gutierrez, Shorthand Reporter and</p> <p>6 Notary Public, State of Florida, certify that GREG</p> <p>7 BLATT appeared before me via videoconference on the</p> <p>8 13th of January, 2023, and was duly sworn.</p> <p>9</p> <p>10 WITNESS my hand and official seal this 25th day</p> <p>11 of January, 2023.</p> <p>12</p> <p>13 </p> <p>14 Marlene Gutierrez</p> <p>15 Notary Public-State of Florida</p> <p>16 My Commission #GG 126375</p> <p>17 Expires: July 20, 2025</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Personally known _____</p> <p>23 Or Produced Identification _____</p> <p>24 Type of Identification Produced _____</p> <p>25</p> <p style="text-align: right;">Page 142</p>	<p>1 Federal Trade Commision v. Match Group, Inc., Et Al.</p> <p>2 Greg Blatt (#5651530)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Greg Blatt Date _____</p> <p>25</p> <p style="text-align: right;">Page 144</p>
<p>1 REPORTER'S DEPOSITION CERTIFICATE</p> <p>2</p> <p>3 STATE OF FLORIDA:</p> <p>4 : SS</p> <p>5 COUNTY OF DADE:</p> <p>6 I, Marlene Gutierrez, Notary Public, certify</p> <p>7 that I was authorized to and did stenographically</p> <p>8 report the deposition of GREG BLATT; that a review of</p> <p>9 the transcript was not requested; and that the</p> <p>10 transcript is a true and complete record of my</p> <p>11 stenographic notes.</p> <p>12</p> <p>13 I further certify that I am not a relative,</p> <p>14 employee, attorney, or counsel of any of the parties,</p> <p>15 parties' attorney, or counsel connected with the</p> <p>16 action, nor financially interested in the action.</p> <p>17</p> <p>18 Dated this 25th day of January, 2023.</p> <p>19</p> <p>20 </p> <p>21 MARLENE GUTIERREZ</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 143</p>	<p>1 Federal Trade Commision v. Match Group, Inc., Et Al.</p> <p>2 Greg Blatt (#5651530)</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Greg Blatt, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10</p> <p>11 _____</p> <p>12 Greg Blatt Date _____</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16</p> <p>17 _____</p> <p>18</p> <p>19 NOTARY PUBLIC</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 145</p>

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEDERAL TRADE COMMISSION, §
§ Case No. 3:19-cv-02281-K
Plaintiff, §
§
v. §
§
MATCH GROUP, INC., a §
corporation, and MATCH §
GROUP, LLC, formerly known §
as MATCH.COM, LLC, a §
limited liability company, §
§
Defendants. §

10 ORAL DEPOSITION OF
11
12 MELISSA CLINCHY
February 16, 2023

14 ORAL DEPOSITION OF MELISSA CLINCHY,
15 produced as a witness at the instance of the Plaintiff,
16 and duly sworn, taken in the above-styled and numbered
17 cause on February 16, 2023, from 9:10 a.m. to
18 4:57 p.m., before Joseph D. Hendrick, Certified
19 Shorthand Reporter in and for the State of Texas,
20 reported by machine shorthand, at the offices of Sidley
21 Austin LLP, 2021 McKinney Avenue, Suite 2000, Dallas,
22 Texas, pursuant to Notice and the Federal Rules of
23 Civil Procedure and any provisions stated on the record
24 or attached hereto.
25 Job No. 5651545

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4	Sarah Zuckerman		4	EXHIBIT 7 FOIA CONFIDENTIAL	79
5	FEDERAL TRADE COMMISSION		5	MATCHFTC330643-330645	
6	1999 Bryan St, Suite 2150		6	Email chain, top email from Adrian Ong dated 12/2/2016; Subject: RE: Account question	
7	Dallas, TX 75201		7	EXHIBIT 8 CONFIDENTIAL	87
8	(214) 979-9350		8	MATCHFTC846346-846347	
9	jmoon@ftc.gov		9	Slack conversation; Channel: Operations-mgmt; Organization: Match Group; Team: Match;	
10	szuckerman@ftc.gov		10	Channel Type: Slack Channel	
11	FOR THE DEFENDANTS:		11	Private; Start date: 2017-03-16 01:27:23 UTC, End date: 2018-04-13 15:19:49 UTC	
12	Angela Zambrano		12	EXHIBIT 9 CONFIDENTIAL	91
13	Taylor Bragg		13	MATCHFTC816591	
14	SIDLEY AUSTIN LLP		14	Email from Melissa Clinchy dated 6/13/2017; Subject: Updated Slides	
15	2021 McKinney Ave Suite 2000,		15	EXHIBIT 10 Match Group Community	93
16	Dallas, TX 75201		16	Operations Update, May 2017	
17	(214) 981-3405		17	PowerPoint	
18	angela.zambrano@sidley.com		18	EXHIBIT 11 CONFIDENTIAL	116
19	tbragg@sidley.com		19	MATCHFTC782131-782132	
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21	Sam Kitchens		21	EXHIBIT 12 FOIA CONFIDENTIAL	121
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13	NO. DESCRIPTION PAGE(S)		13	Email chain, top email from Melissa Clinchy dated 6/12/2017; Subject: RE: BBB Question	
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18	EXHIBIT 3 FOIA CONFIDENTIAL 42		18	MATCHFTC789544-789551	
19	MATCHFTCS19412-519415		19	Email chain, top email from LaShonda Pero dated 10/27/2015; Subject: RE: Congrats! Here's Your	
20	Email chain, top email from Rachel Walzl dated 12-17-2015; Subject: RE: CSA cancel note?		20	Subscription Information	
21	EXHIBIT 4 FOIA CONFIDENTIAL 49		21	EXHIBIT 20 CONFIDENTIAL	197
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23	Email chain, top email from Sharmistha Dubey dated 2-24-2016; Subject: RE: Resignation flow		23	Email chain, top email from Melissa Clinchy dated 1/9/2018; Subject: FW: Congrats! Here's Your	
24	EXHIBIT 5 PowerPoint presentation; Not 56		24	Subscription Information	
25	just another broken window; Account Settings Redesign		25		
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<p>1 EXHIBIT 21 CONFIDENTIAL 199 MATCHFTC798148-798150 2 Email chain, top email from Jeremy Ruggaber dated 3 10/5/2016; Subject: Re: 6mg progress page 4 EXHIBIT 22 CONFIDENTIAL 203 5 MATCHFTC799944 Email from LaShonda Pero dated 6 3/6/2015; Subject: Match.com guarantee 7 8 9 CERTIFIED QUESTIONS/INSTRUCTIONS NOT TO ANSWER 10 NO. PAGE/LINE 11 1 Can you tell me which documents you reviewed in preparation for your deposition today? 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 6</p>	<p>1 Q. And are you familiar with the general 2 nature of the lawsuit? 3 A. Yes. 4 Q. Okay. And now are you represented by 5 Ms. Zambrano here today? 6 MS. ZAMBRANO: She is. 7 A. Yes. 8 BY MR. MOON: 9 Q. Okay. Have you had an opportunity to meet 10 with Ms. Zambrano to prepare for your deposition? 11 A. Yes. 12 Q. On how many occasions have you met with 13 her? 14 A. Three. 15 Q. Okay. Do you know how many hours total you 16 have spent with her? 17 A. I don't think I could give a total number 18 of hours, no. 19 Q. Okay. And I am trying not to ask you about 20 any communications you had between her, I'm just asking 21 questions -- other questions around that. 22 Have you given a deposition before? 23 A. No. 24 Q. Okay. Well, let me -- I do think that this 25 will take most of the day unfortunately. We do have a</p> <p style="text-align: right;">Page 8</p>
<p>1 THE REPORTER: Would you raise your right 2 hand, please. 3 THE WITNESS: (Complied) 4 THE REPORTER: Do you swear or affirm that 5 the testimony you are about to give in this case will 6 be the truth, the whole truth, and nothing but the 7 truth? 8 THE WITNESS: I do. 9 MELISSA CLINCHY 10 having been duly sworn, testified as follows: 11 EXAMINATION 12 BY MR. MOON: 13 Q. Good morning, Ms. Clinchy. 14 A. Good morning. 15 Q. My name is Jason Moon and I am here with my 16 co-counsel Sarah Zukerman and also Marsha Felcus who is 17 an intern with our office, she is going to watch today. 18 We are all with the FTC, and the FTC has filed an 19 action which you probably know against Match Group Inc. 20 and Match Group LLC, and we have alleged violations of 21 the FTC Act and the Restore Online Shoppers Confidence 22 Act. 23 And so you understand what our role is in 24 the litigation? 25 A. Yes.</p> <p style="text-align: right;">Page 7</p>	<p>1 lot of material to cover, I'll try to move through it 2 quickly. We will try to take breaks every hour. If 3 you feel like you need a break other than once an hour, 4 let me know and I'll be happy to do that. 5 The only thing I'd ask is that if there is 6 a question on the table, I'd ask for you to answer that 7 and then we will take our break. Is that agreeable to 8 you? 9 A. Yes. 10 Q. Okay. From time to time there may be -- 11 Ms. Zambrano may -- or one of the other attorneys may 12 make an objection. There's no judge here to rule on 13 objections so the proper thing to do there is just let 14 the discussion happen and then go ahead and answer your 15 question. 16 MS. ZAMBRANO: Unless I instruct you not to 17 answer based on privilege. 18 MR. MOON: Right. 19 BY MR. MOON: 20 Q. And if your counsel instructs you not to 21 answer, then you will have to decide whether or not you 22 are going to follow that instruction. So that would be 23 the exception to what I'm telling you. 24 Okay. And what often happens with 25 witnesses is after there's been a discussion a lot of</p> <p style="text-align: right;">Page 9</p>

<p>1 phone call.</p> <p>2 BY MR. MOON:</p> <p>3 Q. Do you have a sense of how many, like,</p> <p>4 request cancellation -- cancellation requests by mail</p> <p>5 you guys would process like within a typical week?</p> <p>6 A. No, I couldn't say.</p> <p>7 Q. Do you recall something called the Match</p> <p>8 Guarantee?</p> <p>9 A. Yes.</p> <p>10 Q. And how did you become familiar -- well,</p> <p>11 tell me in your own words your understanding of what</p> <p>12 the Match Guarantee was?</p> <p>13 A. The Match Guarantee was if you purchased a</p> <p>14 6-month subscription with a guarantee on it, if you</p> <p>15 fulfilled the requirements of the 6-month guarantee,</p> <p>16 you would receive an additional 6 months on the site at</p> <p>17 no cost.</p> <p>18 Q. Okay. And how did -- how was it that you</p> <p>19 became familiar with the Match Guarantee?</p> <p>20 A. When you are hired on to the customer</p> <p>21 support team as an agent you were trained on the</p> <p>22 website, so I would have been trained on what the Match</p> <p>23 Guarantee was when I was hired on to the customer</p> <p>24 support team and went through a training, you had to be</p> <p>25 trained on the site and/or policies before you were</p> <p style="text-align: right;">Page 182</p>	<p>1 MS. ZAMBRANO: Objection, form.</p> <p>2 A. Our photos went through -- do you mean</p> <p>3 approved by, like, our photos went through moderation</p> <p>4 to make sure that no one was uploading anything</p> <p>5 inappropriate to the site.</p> <p>6 BY MR. MOON:</p> <p>7 Q. Right. You had to upload a profile that</p> <p>8 made it through Match's content moderation policy.</p> <p>9 A. Yes, I -- it had to be an approved photo,</p> <p>10 yes.</p> <p>11 Q. And you had to keep it up the entire time</p> <p>12 during the 6-month subscription?</p> <p>13 A. I don't recall the rules around that.</p> <p>14 Q. Do you recall that you had to message five</p> <p>15 people a month?</p> <p>16 A. Yes, five unique members a month, yes.</p> <p>17 Q. Okay. And do you recall that there was</p> <p>18 something called the Guarantee Tracker website or web</p> <p>19 page I guess?</p> <p>20 A. Yes, I remember there was a guarantee</p> <p>21 tracker.</p> <p>22 Q. And do you recall that you had to access</p> <p>23 the customer tracker website and accept the renewal</p> <p>24 within 7 days before expiration?</p> <p>25 A. I don't remember the guidelines around</p> <p style="text-align: right;">Page 184</p>
<p>1 allowed to interact with members.</p> <p>2 Q. Okay. Did you have any job</p> <p>3 responsibilities that related to the 6-month guarantee?</p> <p>4 A. I --</p> <p>5 MS. ZAMBRANO: Objection. Vague. Go</p> <p>6 ahead.</p> <p>7 A. When I was an agent, I would assist members</p> <p>8 with questions about the 6-month guarantee or the</p> <p>9 concerns about the 6-month guarantee, and so in that</p> <p>10 aspect, like, yes, I assisted members with the 6-month</p> <p>11 guarantee.</p> <p>12 BY MR. MOON:</p> <p>13 Q. Okay. Are you familiar with conditions</p> <p>14 that a member had to qualify in order to redeem the</p> <p>15 Match Guarantee?</p> <p>16 A. Do you mean do I remember what you had to</p> <p>17 do to get the 6-month guarantee?</p> <p>18 Q. Yes.</p> <p>19 A. I don't recall all of them.</p> <p>20 Q. You had to -- do you recall that you had to</p> <p>21 put up a profile picture that was approved by Match?</p> <p>22 A. Yes, you did have to have a photo on your</p> <p>23 account.</p> <p>24 Q. And that photo had to be approved by Match;</p> <p>25 is that right?</p> <p style="text-align: right;">Page 183</p>	<p>1 accepting the guarantee. I don't -- I -- I don't</p> <p>2 remember what it looks like. Like, just sitting here</p> <p>3 trying to think back, I don't remember what it looks</p> <p>4 like. I don't know.</p> <p>5 Q. Okay. Do you recall Match, while you were</p> <p>6 there did Match receive complaints from Match members</p> <p>7 about the Match Guarantee?</p> <p>8 MS. ZAMBRANO: Objection, form.</p> <p>9 A. We received members contacting us about the</p> <p>10 Match Guarantee, yes.</p> <p>11 BY MR. MOON:</p> <p>12 Q. Do you remember the nature of the</p> <p>13 complaints?</p> <p>14 MS. ZAMBRANO: Objection, form.</p> <p>15 A. I do know that if someone had met the</p> <p>16 requirements and contacted us that we were able to</p> <p>17 provide the Match Guarantee; our agents were able to</p> <p>18 add the time on to their account.</p> <p>19 BY MR. MOON:</p> <p>20 Q. Okay. Do you recall whether people</p> <p>21 complained to Match that they didn't understand the</p> <p>22 requirements of the Match Guarantee?</p> <p>23 MS. ZAMBRANO: Objection, form.</p> <p>24 A. I don't -- I -- I'm sure that happened. I</p> <p>25 don't recall specific instances, but people contacted</p> <p style="text-align: right;">Page 185</p>

<p>1 us all the time if they didn't understand a lot of</p> <p>2 things about the website. So I don't remember that</p> <p>3 specifically, but I know that members contacted us</p> <p>4 about the 6-month guarantee.</p> <p>5 BY MR. MOON:</p> <p>6 Q. Do you remember members contacting Match</p> <p>7 and claiming that they were entitled to the redemption</p> <p>8 to the guarantee but were unable to redeem it?</p> <p>9 A. I know that members contacted us to --</p> <p>10 about the 6-month guarantee or assisting them in</p> <p>11 redeeming it. Yes, I remember members contacting us</p> <p>12 about it.</p> <p>13 Q. Okay. Do you remember any members</p> <p>14 complaining about the requirements of the Match</p> <p>15 Guarantee?</p> <p>16 MS. ZAMBRANO: Objection, form.</p> <p>17 A. I do know members that contacted us about</p> <p>18 the guarantee, and I do remember explaining that we had</p> <p>19 requirements on the guarantee to encourage members</p> <p>20 to -- not use the site correctly, but these</p> <p>21 requirements helped members have a more successful time</p> <p>22 on the website.</p> <p>23 BY MR. MOON:</p> <p>24 Q. Okay. And that was in the context of</p> <p>25 responding to members who were asking questions with</p> <p style="text-align: right;">Page 186</p>	<p>1 your advantage. The same with having a visible</p> <p>2 profile. How is anyone going to contact you if you</p> <p>3 don't have a visible profile?</p> <p>4 So I felt that the requirements were there</p> <p>5 to help our members, and that's why I was working at</p> <p>6 match.com. I wanted to help our members be successful</p> <p>7 on the site and I feel like those requirements helped</p> <p>8 our members have a more successful experience.</p> <p>9 Q. Did you ever propose changes to the</p> <p>10 requirements of the Match Guarantee?</p> <p>11 A. I don't recall doing that.</p> <p>12 Q. Did you ever propose any changes to how</p> <p>13 consumers were made aware of the Match Guarantee</p> <p>14 requirements?</p> <p>15 A. No, I don't recall that.</p> <p>16 Q. Did you ever propose any changes to how</p> <p>17 consumers were to be made aware of how to redeem the</p> <p>18 Match Guarantee?</p> <p>19 A. No, I don't recall that.</p> <p>20 Q. Do you know of anyone else proposing</p> <p>21 changes to the requirements of the Match Guarantee?</p> <p>22 A. No, I don't recall that.</p> <p>23 (Marked Deposition Ex. 18)</p> <p>24 BY MR. MOON:</p> <p>25 Q. Okay. I hand you what has been marked as</p> <p style="text-align: right;">Page 188</p>
<p>1 the requirements?</p> <p>2 A. Exactly.</p> <p>3 Q. Okay. Do you ever remember handling any</p> <p>4 complaints about the Match guarantee that you thought</p> <p>5 were valid and the customer had a point about the Match</p> <p>6 Guarantee?</p> <p>7 A. I mean I think all the member feedback was</p> <p>8 valid at some point. I don't think I necessarily</p> <p>9 agreed with all of it, and I think it was important for</p> <p>10 customer to -- customer support to provide information</p> <p>11 on why we had that. And I do remember an example I</p> <p>12 would use is, if you go into a bar and you just put</p> <p>13 your head down on a bar, no one's going to come talk to</p> <p>14 you, right? Like, you're the person with your head on</p> <p>15 the bar.</p> <p>16 But if you go into a bar and you are</p> <p>17 chatting with people and you are interacting, you're</p> <p>18 more likely to meet someone. It's just common sense.</p> <p>19 So when you have the Match Guarantee requirements, this</p> <p>20 is just to encourage people to take the steps that they</p> <p>21 might need to use the website successfully.</p> <p>22 Someone might be shy about uploading a</p> <p>23 photo, well, if you have the 6-month guarantee we know</p> <p>24 that uploading a photo you are going to have better</p> <p>25 success on the site so uploading a photo is only to</p> <p style="text-align: right;">Page 187</p>	<p>1 Deposition Exhibit 18. This is 731717.</p> <p>2 A. Thank you.</p> <p>3 Q. Take a moment to review that one,</p> <p>4 Ms. Clinchy.</p> <p>5 A. Okay.</p> <p>6 Q. Okay. Do you recall this particular email</p> <p>7 thread?</p> <p>8 A. No, I don't remember this email.</p> <p>9 Q. Do you know who McKay Hinckley was?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What was McKay Hinckley's position?</p> <p>12 A. He was on the customer support team. I see</p> <p>13 here it says he was quality analyst. I know he had</p> <p>14 different roles within the customer support team when</p> <p>15 he was there.</p> <p>16 Q. What does "customer support team" refer to?</p> <p>17 A. Like Community or, you know, the team that</p> <p>18 we were on.</p> <p>19 Q. Oh, that's -- we're still talking about</p> <p>20 your department?</p> <p>21 A. Yes. Yes, yes, yes.</p> <p>22 Q. Okay. Do you remember specifically what</p> <p>23 his role was within your department?</p> <p>24 A. Here it says he was quality analyst, but I</p> <p>25 do know that he was also a corporate -- he was an agent</p> <p style="text-align: right;">Page 189</p>

<p>1 at one time as well.</p> <p>2 Q. Okay. And then Sydney Yensull, do you know</p> <p>3 who that was?</p> <p>4 A. Yes.</p> <p>5 Q. And what is mister -- was that a man or a</p> <p>6 woman?</p> <p>7 A. It's a woman.</p> <p>8 Q. Okay. What was Ms. Yensull's position with</p> <p>9 Match?</p> <p>10 A. She was within customer support.</p> <p>11 Q. Do you know what her specific role was</p> <p>12 within customer support?</p> <p>13 A. I don't remember what her title was, but</p> <p>14 she did report to me.</p> <p>15 Q. What was her job, what was her focus of her</p> <p>16 duties as she worked for you?</p> <p>17 MS. ZAMBRANO: Objection, form. Compound.</p> <p>18 A. I can't tell you what she was doing day to</p> <p>19 day. I'm sorry, I -- I don't -- I don't recall.</p> <p>20 BY MR. MOON:</p> <p>21 Q. Do you have -- okay. So Mr. Hinckley</p> <p>22 writes, "Here is the list I sent Brett," correct?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. Okay. And then do you know which Brett he</p> <p>25 is referring to there?</p> <p style="text-align: right;">Page 190</p>	<p>1 A. No, I just know that we moved to that</p> <p>2 office, that match.com moved to that office.</p> <p>3 BY MR. MOON:</p> <p>4 Q. Okay. You moved there from Douglas?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you know when that was?</p> <p>7 MS. ZAMBRANO: Objection. Asked and</p> <p>8 answered.</p> <p>9 A. Before September of 2017. Like -- no, I</p> <p>10 don't know when we moved there.</p> <p>11 BY MR. MOON:</p> <p>12 Q. Okay. So do you remember you testified you</p> <p>13 don't remember this email exchange, right?</p> <p>14 A. No, I don't remember.</p> <p>15 Q. Do you remember that Mr. Hinckley, if</p> <p>16 Mr. Hinckley in fact did send a list to Brett, somebody</p> <p>17 named Brett, that includes the recommendation, "Make it</p> <p>18 more clear that Match Guarantee has requirements and</p> <p>19 that it requires an extra step to be redeemed"?</p> <p>20 A. No, I don't know.</p> <p>21 Q. Okay. Any idea what he is referring to</p> <p>22 when he says "extra step to be redeemed"?</p> <p>23 MS. ZAMBRANO: Objection. Calls for</p> <p>24 speculation.</p> <p>25 A. No, I -- I don't know.</p> <p style="text-align: right;">Page 192</p>
<p>1 MS. ZAMBRANO: Objection. Calls for</p> <p>2 speculation.</p> <p>3 A. No, I can't say.</p> <p>4 BY MR. MOON:</p> <p>5 Q. Was there a Bret Williams who worked for</p> <p>6 Match?</p> <p>7 A. Yes, but Bret Williams spelled his name</p> <p>8 with one T.</p> <p>9 Q. Okay. Was there a Brett Richards that</p> <p>10 worked for Match?</p> <p>11 A. Yes, there was.</p> <p>12 Q. Was that a person --</p> <p>13 MS. ZAMBRANO: Excuse me. Objection.</p> <p>14 Calls for speculation.</p> <p>15 A. I can't say. I don't remember.</p> <p>16 BY MR. MOON:</p> <p>17 Q. Okay. So go down to Mr. Hinckley's</p> <p>18 signature tag line, it's got a North Central Expressway</p> <p>19 address; is that right?</p> <p>20 A. I see that, yes.</p> <p>21 Q. Do you have an understanding of which</p> <p>22 functions were within the Central Expressway address</p> <p>23 versus the Douglas address?</p> <p>24 MS. ZAMBRANO: Objection, form of the</p> <p>25 question.</p> <p style="text-align: right;">Page 191</p>	<p>1 (Marked Deposition Ex. 19)</p> <p>2 BY MR. MOON:</p> <p>3 Q. Okay. I'm handing you a document that's</p> <p>4 been marked as Deposition Exhibit Number 19, Bates</p> <p>5 labeled 789544.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. So this email -- is this email chain</p> <p>8 about the issue of whether or not the confirmation</p> <p>9 email that a subscriber -- I mean, I'm sorry. A member</p> <p>10 would receive would contain a link to the rules for the</p> <p>11 6-month guarantee?</p> <p>12 MS. ZAMBRANO: Objection, form of the</p> <p>13 question.</p> <p>14 A. So a lot of different things in the email.</p> <p>15 BY MR. MOON:</p> <p>16 Q. That's okay, we can -- I can break it down,</p> <p>17 that's fine, if you'd rather -- yeah, that's fine. I'm</p> <p>18 trying to save some time, but let's go through it so we</p> <p>19 can know what we're doing here.</p> <p>20 Okay. So let's look, then, at page 789547</p> <p>21 in the middle of the page, email from you to LaShonda</p> <p>22 Pero October 21st, 2015. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And it says, "Here's what you get</p> <p>25 when you buy a 6-month sub in CSA."</p> <p style="text-align: right;">Page 193</p>

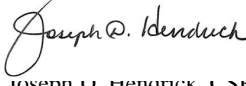
<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS: MELISSA CLINCHY</p> <p>3 DATE: February 16, 2023</p> <p>4 Page/Line Change Reason</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p> <p style="text-align: right;">Page 242</p>	<p>1 REPORTER'S CERTIFICATION</p> <p>2 DEPOSITION OF MELISSA CLINCHY</p> <p>3 February 16, 2023</p> <p>4 I, Joseph D. Hendrick, Notary Public and</p> <p>5 Certified Shorthand Reporter in the State of Texas,</p> <p>6 hereby certify to the following:</p> <p>7 That the Witness, MELISSA CLINCHY, was duly</p> <p>8 sworn by the officer and that the transcript of the</p> <p>9 oral deposition is a true record of the testimony given</p> <p>10 by the witness;</p> <p>11 I further certify that pursuant to FRCP</p> <p>12 Rule 30(f)(1) the signature of the deponent:</p> <p>13 X was requested by the deponent or</p> <p>14 a party before the completion of the deposition and is</p> <p>15 to be returned within 30 days from date of receipt of</p> <p>16 the transcript;</p> <p>17 _____ was not requested by the</p> <p>18 deponent or a party before the completion of the</p> <p>19 deposition;</p> <p>20 I further certify that the amount of time</p> <p>21 used by each party is as follows:</p> <p>22 Jason Moon - 05:42:06</p> <p>23 Angela Zambrano - 00:14:00</p> <p>24 I further certify that I am neither counsel</p> <p>25 for, related to, nor employed by any of the parties or</p> <p style="text-align: right;">Page 244</p>
<p>1 I, MELISSA CLINCHY, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 MELISSA CLINCHY</p> <p>7 STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9</p> <p>10 Before me _____ on this day</p> <p>11 personally appeared MELISSA CLINCHY, known to me (or</p> <p>12 proved to me on the oath of _____ or</p> <p>13 through _____ (description of identity card</p> <p>14 or other document)) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument and acknowledged</p> <p>16 to me that he executed the same for the purposes and</p> <p>17 consideration therein expressed.</p> <p>18 Given under my hand and seal of office this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public in and for the</p> <p>23 State of _____</p> <p>24</p> <p>25 Job No. TX5651545</p> <p style="text-align: right;">Page 243</p>	<p>1 attorneys in the action in which this proceeding was</p> <p>2 taken;</p> <p>3 Further, I am not a relative or employee of</p> <p>4 any attorney of record, nor am I financially or</p> <p>5 otherwise interested in the outcome of the action.</p> <p>6 Subscribed and sworn to on this date:</p> <p>7 March 2, 2023.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 </p> <p>15 Joseph D. Hendrick, CSR #947</p> <p>16 Expiration Date: 04/30/2023</p> <p>17 Notary Comm. Exp. 01/13/23</p> <p>18 Veritext Legal Solutions</p> <p>19 Firm Registration No. 571</p> <p>20 300 Throckmorton Street, Ste. 1600</p> <p>21 Fort Worth, TX 76102</p> <p>22 Telephone (800) 336-4000</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 245</p>

EXHIBIT 5

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEDERAL TRADE COMMISSION, §
§ Case No. 3:19-cv-02281-K
Plaintiff, §
§
v. §
§
MATCH GROUP, INC., a §
corporation and MATCH §
GROUP, LLC, formerly known §
as Match.com, LLC, a §
limited liability company, §
§
Defendants. §

ORAL AND VIDEOTAPED DEPOSITION OF
MANDY GINSBERG
February 23, 2023

ORAL AND VIDEOTAPED DEPOSITION OF MANDY
GINSBERG, produced as a witness at the instance of the
Plaintiff, and duly sworn, taken in the above-styled
and numbered cause on February 23, 2023, from 9:09 a.m.
to 4:07 p.m., before Joseph D. Hendrick, Certified
Shorthand Reporter in and for the State of Texas,
reported by machine shorthand, at the offices of Sidley
Austin LLP, 2021 McKinney Avenue, Suite 2000, Dallas,
Texas, pursuant to Notice and the Federal Rules of
Civil Procedure and any provisions stated on the record
or attached hereto.
Job No. 5651550

App. 51

<p>1 time scaling it, I became CEO.</p> <p>2 Q. Okay. And then after the tutor.com, you</p> <p>3 then went on to serve as the CEO of Match Group North</p> <p>4 America; is that right?</p> <p>5 A. Yes, the CEO of Match Group North America,</p> <p>6 yes.</p> <p>7 Q. How were you hired for that position?</p> <p>8 MS. ZAMBRANO: Objection, form. Vague.</p> <p>9 A. I can't remember the details, but I</p> <p>10 remember Greg Blatt - but I can't remember any other</p> <p>11 board member - said that, "We were becoming a public</p> <p>12 company, we have a lot of exciting opportunities and</p> <p>13 growth, but I really would like for you to come back</p> <p>14 because we've got -- given that we are a public company</p> <p>15 and given we've got so much to do on our plate, I need</p> <p>16 more bench strength, and so I want to talk to you about</p> <p>17 coming back."</p> <p>18 So we discussed it for several months and I</p> <p>19 ultimately came back into the business.</p> <p>20 MS. ZUCKERMAN: I pass the witness.</p> <p>21 MS. ZAMBRANO: Okay. Thank you.</p> <p>22 EXAMINATION</p> <p>23 BY MS. ZAMBRANO:</p> <p>24 Q. Ms. Ginsberg, I am going to ask you some</p> <p>25 questions about your prior testimony today.</p> <p style="text-align: right;">Page 198</p>	<p>1 inbox, I would forward them on to the appropriate</p> <p>2 brand.</p> <p>3 Q. Why did you do that?</p> <p>4 A. Because I could have ignored them, but I</p> <p>5 just feel like you shouldn't ignore customers and so I</p> <p>6 forwarded them on to the brand that could respond to</p> <p>7 those customers.</p> <p>8 Q. Okay. I want to talk to you about the use</p> <p>9 of the word "we" in the deposition today. The FTC's</p> <p>10 counsel has asked you a couple of times in particular</p> <p>11 questions what you meant by "we." But you have used</p> <p>12 the term "we" several times during the deposition. Do</p> <p>13 you recall using that word today?</p> <p>14 A. I'm sure I used "we" and "I" lots of times,</p> <p>15 yes.</p> <p>16 Q. When you have used the word "we" in this</p> <p>17 deposition, have you always meant to be referring to</p> <p>18 Match Group, Inc.?</p> <p>19 A. No. I mean, as humans, we -- so I was the</p> <p>20 captain of a soccer team, and so I wouldn't say I; I</p> <p>21 would say "we." So as part of a group or a family or</p> <p>22 an organization, we'd say "we." So, you know, I talk</p> <p>23 in human talk, not legal talk, but I would refer to we</p> <p>24 a lot of different ways throughout the day.</p> <p>25 Q. Okay. So you haven't been testifying with</p> <p style="text-align: right;">Page 200</p>
<p>1 I am going to start with the subject of the</p> <p>2 customer contacts that you have seen a couple of</p> <p>3 examples of before, and I think you have the stack of</p> <p>4 exhibits in front of you. I'm just going to give</p> <p>5 you -- call out one was an example.</p> <p>6 Okay. Exhibit 2 is an example of a</p> <p>7 customer contact that you received when you were at CEO</p> <p>8 of Match Group North America, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And I think you were also shown</p> <p>11 examples of customer contacts that you received at CEO</p> <p>12 of Match Group, Inc.</p> <p>13 Do you recall seeing some of those emails</p> <p>14 today?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Was it common for you in your role</p> <p>17 as CEO of Match Group, Inc., to receive Match.com</p> <p>18 customer complaints?</p> <p>19 A. Not common, but not -- not shocking, but it</p> <p>20 wasn't common that people would reach out to me.</p> <p>21 Q. And was it your responsibility to handle</p> <p>22 the Match.com contacts as the CEO of Match Group, Inc.?</p> <p>23 A. It was definitely not my responsibility and</p> <p>24 I received emails from various customers from various</p> <p>25 brands, and so if I saw them and noticed them in my</p> <p style="text-align: right;">Page 199</p>	<p>1 respect to legal entities today?</p> <p>2 A. No.</p> <p>3 Q. Do you know if Match Group, Inc. -- let's</p> <p>4 talk about Match Group, Inc. for a second.</p> <p>5 Do you know if Match Group, Inc. had any</p> <p>6 programmers, that entity?</p> <p>7 A. Match Group, Inc. had no programmers, no</p> <p>8 engineers.</p> <p>9 Q. So when I -- so I'm going to ask you some</p> <p>10 more questions again just on the Inc. entity.</p> <p>11 Did Match Group, Inc. have any customer</p> <p>12 care agents?</p> <p>13 A. No. Zero.</p> <p>14 Q. What about designers? Did Match Group,</p> <p>15 Inc. have designers?</p> <p>16 A. No, there are no designers at Match Group,</p> <p>17 Inc.</p> <p>18 Q. Okay. I want to ask you about a couple of</p> <p>19 parts of your testimony today.</p> <p>20 One -- and I'm reading from the rough draft</p> <p>21 today, and Joe has done an excellent job transcribing,</p> <p>22 but I may get a word wrong or it may not be perfectly</p> <p>23 transcribed; so I'll just read it the way it is in the</p> <p>24 rough transcript. Okay?</p> <p>25 All right. You were asked the following</p> <p style="text-align: right;">Page 201</p>

<p>1 question: Did you consider changing the Match.com 2 online cancellation flow? And the word that was used 3 was "you." Did you consider changing the Match.com 4 online cancellation flow? And your answer was as 5 follows: Like I said, this is one of those businesses 6 where we constantly iterating, changing, testing, you 7 know, sort of investigate new flows; so that's not 8 something I recall, but I would not be surprised if we 9 looked at all those flows.</p> <p>10 What were you referring to as "we" in that 11 sentence?</p> <p>12 A. "We" would mean members of the team, but I 13 personally would never go in and make decisions about 14 the individual product lists.</p> <p>15 Q. So when you were at Match Group, Inc. as 16 CEO, was any part of your job responsibility to design 17 or maintain a cancellation flow for any brand?</p> <p>18 A. No.</p> <p>19 Q. And the same question regarding a 20 chargeback policy; did any part of your job 21 responsibilities relate to designing or maintaining a 22 policy relating to chargebacks?</p> <p>23 A. No.</p> <p>24 Q. And the Match.com guarantee that we have 25 talked about today and that you referred to as the</p> <p style="text-align: right;">Page 202</p>	<p>1 Q. Okay. You were asked about a couple of 2 other exhibits that I am going to ask you about now. 3 First about Exhibit 19, if you would get that one in 4 front of you. Do you remember being questioned about 5 Exhibit 19?</p> <p>6 A. Yes. Earlier today I was.</p> <p>7 Q. Okay. And, again, I'm looking at the rough 8 transcript, but in the rough transcript on page 165, 9 you had referred to consciously misleading figures in 10 Exhibit 19 and the FTC's counsel asked you what you 11 meant by that, and I'm going to read your response that 12 was taken down and then ask you a question about it.</p> <p>13 You said, "I don't remember the specifics, 14 but I remember I was deeply offended because everyone 15 at the company knew that I had real integrity when it 16 came to running the business and really believed in 17 treating our customers right and the fact that we were 18 being litigated Match.com was being litigated based on 19 practices that I didn't agree with. I felt like I had 20 to speak out because employees cared about the tone at 21 the top in their leaders and that was important to me."</p> <p>22 That's the way that your answer was taken 23 down. But I have a question about that phrase that you 24 used based on practices that I didn't agree with. 25 What were you referring to there?</p> <p style="text-align: right;">Page 204</p>
<p>1 guarantee, was any part of your job responsibility when 2 you were MGI CEO to design or maintain or otherwise 3 deal with the Match.com guarantee?</p> <p>4 A. No.</p> <p>5 Q. Well, did Match dot -- excuse me. 6 Did Match Group, Inc. direct the brands on 7 decisions about things like this: Cancellation flows, 8 guarantees, or chargebacks?</p> <p>9 A. The individual brands managed all aspects 10 of their business; marketing, product, analytics. That 11 was their responsibility, not mine.</p> <p>12 Q. Well, were the brands managed collectively 13 as a unit?</p> <p>14 A. No. Each -- each brand would operate 15 independently and in their financials meaning their P&L 16 their financials would rollup and we would report it to 17 the street, but the individual brands would manage 18 their businesses independently of the other brands.</p> <p>19 Q. Other than the financial reporting at the 20 public company level that you just testified about, was 21 there integration generally across functions of the 22 brands?</p> <p>23 A. There was not integration across all the 24 various brands. The only exception was finance and 25 legal where we would coordinate across those brands.</p> <p style="text-align: right;">Page 203</p>	<p>1 A. I misspoke because clearly I feel strongly 2 about it. I did not agree with the accusations that 3 were being lodged against Match.com.</p> <p>4 Q. In the litigation that was filed by the 5 FTC?</p> <p>6 A. In the litigation. So I didn't agree with 7 the accusations. I think I misspoke when I said 8 practices, but I meant accusations.</p> <p>9 Q. Now I want to ask you about an exhibit. 10 Let me show you 17, actually. You were asked about a 11 few pages in this deck, and I understand that you don't 12 recall receiving the deck or communicating about the 13 deck. Is that fair?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. But I do want to ask you about the 16 list of issues that were reported on page 25 of 17 Exhibit 17, and specifically the first one that says, 18 "Current, locate account settings, difficult to find."</p> <p>19 So I think that's referring to the next 20 page in the deck, which is not numbered, but it's the 21 26th page. Do you see where the heading says Account 22 Settings Page Confusing and Cluttered?</p> <p>23 A. I read that.</p> <p>24 Q. Okay. Do you agree that the account 25 settings page that we are looking at was confusing and</p> <p style="text-align: right;">Page 205</p>

<p>1 cluttered?</p> <p>2 A. I don't agree.</p> <p>3 Q. Why not?</p> <p>4 A. Because "account settings" at the top</p> <p>5 left-hand side is the very first thing you see, and</p> <p>6 then every account setting is very clearly laid out</p> <p>7 both on the top across and on the left-hand side; so</p> <p>8 not only is it once but twice to make sure people see</p> <p>9 it.</p> <p>10 Q. And then going back to the list of topics</p> <p>11 on page 25, the third one says, "Enter password,</p> <p>12 already entered on login."</p> <p>13 Did you have any concerns about the fact</p> <p>14 that the cancellation -- let me start again.</p> <p>15 Do you have any concerns, as you sit here</p> <p>16 today, that the Match.com cancellation flow required</p> <p>17 the subscriber to enter the password?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. Well, it says, "The information you are</p> <p>21 about to view is private," so this is to make sure you</p> <p>22 protect information from users and then very clear</p> <p>23 "continue cancelation" button.</p> <p>24 Q. When you say "protect information from</p> <p>25 users," what do you mean?</p> <p style="text-align: right;">Page 206</p>	<p>1 important for us to understand success rates and who</p> <p>2 was -- who were the people that actually found success.</p> <p>3 Q. And when you were the CEO of Match.com, did</p> <p>4 you ever have any concerns about the Match.com</p> <p>5 cancellation flow that you can recall as you sit here</p> <p>6 today?</p> <p>7 A. I don't recall; although, I see the</p> <p>8 "continue to cancel" button on each of these screens.</p> <p>9 MS. ZAMBRANO: One moment.</p> <p>10 BY MS. ZAMBRANO:</p> <p>11 Q. Do you understand that the allegation of</p> <p>12 the FTC in this case is that Match.com's cancellation</p> <p>13 flow is not simple?</p> <p>14 A. Yes, I understand that.</p> <p>15 Q. Do you -- did you ever hear anyone at</p> <p>16 Match.com when you were the CEO express that there was</p> <p>17 an intent to make the cancellation flow not simple?</p> <p>18 A. There was never any intention to make a</p> <p>19 cancellation flow not simple; in fact, we looked at all</p> <p>20 the data that suggests high 90 percent of people had no</p> <p>21 problem cancelling.</p> <p>22 Q. Do you recall any discussions when you were</p> <p>23 the CEO of Match.com about making the product more</p> <p>24 difficult to cancel?</p> <p>25 A. No. We would not want to make the product</p> <p style="text-align: right;">Page 208</p>
<p>1 A. I mentioned before that as in order to make</p> <p>2 sure -- I don't remember this flow, so I don't remember</p> <p>3 the specifics, but the reason that we asked people for</p> <p>4 information about user name or password is to make sure</p> <p>5 that there are no bad architects entering this page, so</p> <p>6 to make sure that they can't get in and access any</p> <p>7 information including user information or other</p> <p>8 information.</p> <p>9 Q. And then back to the list of topics, there</p> <p>10 is a survey question that's referenced Number 6. Do</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Are you -- you just testified you're</p> <p>14 not familiar with the Match.com flow per se, but do you</p> <p>15 recall that the cancellation flow asked subscribers why</p> <p>16 they were cancelling their membership?</p> <p>17 A. I don't remember the specifics of the flow,</p> <p>18 but we have a very unique category in business that is</p> <p>19 episodic, and so people leave because they're happy and</p> <p>20 they might leave because they're not happy. So they</p> <p>21 leave because they found someone.</p> <p>22 Well, we don't know why people are leaving,</p> <p>23 and in order for us to understand why people leave and</p> <p>24 how to improve the product either for other people in</p> <p>25 the community or when and if they come back, it's</p> <p style="text-align: right;">Page 207</p>	<p>1 difficult to cancel because at the end of the day, our</p> <p>2 customers would either tell people about it or come</p> <p>3 back themselves, and so if we made -- if customers were</p> <p>4 unhappy leaving our site or app, they wouldn't come</p> <p>5 back, and as I mentioned before, half the people that</p> <p>6 come every day are past customers, and so it would not</p> <p>7 make sense to make our customers unhappy or frustrated.</p> <p>8 MS. ZAMBRANO: Pass the witness.</p> <p>9 RE-EXAMINATION</p> <p>10 BY MS. ZUCKERMAN:</p> <p>11 Q. Ms. Ginsberg, could you please look at</p> <p>12 Exhibit 2?</p> <p>13 So in this exhibit, the email thread is</p> <p>14 dated March 14, 2018, right?</p> <p>15 A. Yes.</p> <p>16 Q. At this point in time, you were the CEO of</p> <p>17 Match Group, Inc.; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did you serve as the CEO of Match Group</p> <p>20 North America at this point as well?</p> <p>21 A. '18, '19, I do not believe; so no, I do not</p> <p>22 think so.</p> <p>23 Q. Do you know who served as the Match Group</p> <p>24 North America CEO at this point in time?</p> <p>25 A. I believe it was Match -- so can you ask me</p> <p style="text-align: right;">Page 209</p>

<p>1 I, MANDY GINSBERG, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 MANDY GINSBERG</p> <p>7 STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9</p> <p>10 Before me _____ on this day</p> <p>11 personally appeared MANDY GINSBERG, known to me (or</p> <p>12 proved to me on the oath of _____ or</p> <p>13 through _____ (description of identity card</p> <p>14 or other document)) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument and acknowledged</p> <p>16 to me that he executed the same for the purposes and</p> <p>17 consideration therein expressed.</p> <p>18 Given under my hand and seal of office this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public in and for the</p> <p>23 State of _____</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 222</p>	<p>1 for, related to, nor employed by any of the parties or</p> <p>2 attorneys in the action in which this proceeding was</p> <p>3 taken;</p> <p>4 Further, I am not a relative or employee of</p> <p>5 any attorney of record, nor am I financially or</p> <p>6 otherwise interested in the outcome of the action.</p> <p>7 Subscribed and sworn to on this date:</p> <p>8 March 13, 2023.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 224</p>
<p>1 REPORTER'S CERTIFICATION</p> <p>2 DEPOSITION OF MANDY GINSBERG</p> <p>3 February 23, 2023</p> <p>4 I, Joseph D. Hendrick, Notary Public and</p> <p>5 Certified Shorthand Reporter in the State of Texas,</p> <p>6 hereby certify to the following:</p> <p>7 That the Witness, MANDY GINSBERG, was duly</p> <p>8 sworn by the officer and that the transcript of the</p> <p>9 oral deposition is a true record of the testimony given</p> <p>10 by the witness;</p> <p>11 I further certify that pursuant to FRCP</p> <p>12 Rule 30(f)(1) the signature of the deponent:</p> <p>13 X was requested by the deponent or</p> <p>14 a party before the completion of the deposition and is</p> <p>15 to be returned within 30 days from date of receipt of</p> <p>16 the transcript;</p> <p>17 _____ was not requested by the</p> <p>18 deponent or a party before the completion of the</p> <p>19 deposition;</p> <p>20 I further certify that the amount of time</p> <p>21 used by each party is as follows:</p> <p>22 Sarah Zuckerman - 04:45:47</p> <p>23 Angela Zambrano - 00:17:32</p> <p>24 All Other Counsel - 00:00:00</p> <p>25 I further certify that I am neither counsel</p> <p style="text-align: right;">Page 223</p>	<p>1 Angela Zambrano</p> <p>2 angela.zambrano@sidley.com</p> <p>3 March 13, 2023</p> <p>4 RE: Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>5 2/23/2023, Mandy Ginsberg (#5651550)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 errata-tx@veritext.com.</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 225</p>

EXHIBIT 6

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEDERAL TRADE COMMISSION, §
§ Case No. 3:19-cv-02281-K
Plaintiff, §
§
v. §
§
MATCH GROUP, INC., a §
corporation, and MATCH §
GROUP, LLC, formerly known §
as MATCH.COM, LLC, a §
limited liability company, §
§
Defendants. §

ORAL DEPOSITION OF

SHARMISTHA DUBEY
as 30(b)(6) Representative of Match Group, Inc.,
March 3, 2023

ORAL DEPOSITION OF SHARMISTHA DUBEY as 30(b)(6)
Representative of Match Group, Inc., produced as a
witness at the instance of the Plaintiff, and duly
sworn, taken in the above-styled and numbered cause on
March 3, 2023, from 9:04 a.m. to 5:26 p.m., before
Joseph D. Hendrick, Certified Shorthand Reporter in and
for the State of Texas, reported by machine shorthand,
at the offices of Sidley Austin LLP, 2021 McKinney
Avenue, Suite 2000, Dallas, Texas, pursuant to Notice
and the Federal Rules of Civil Procedure and any
provisions stated on the record or attached hereto.

Job No. 5651555

1 2 3 4 5 6 7 8 9 10 11 12 13 14	APPEARANCES FOR THE PLAINTIFF: Reid Tepfer Sarah Zuckerman FEDERAL TRADE COMMISSION 1999 Bryan Street, Suite 2150 Dallas, TX 75201 (214) 979-9350 rtepf@ftc.gov szuckerman@ftc.gov FOR THE DEFENDANTS: Benjamin M. Mundel SIDLEY AUSTIN LLP 1501 K Street, N.W. Washington, D.C. 20005 202-736-8000 bmundel@sidley.com Chelsea Priest SIDLEY AUSTIN LLP 2021 McKinney Avenue, Suite 2000 Dallas, TX 75201 (214) 981-3405 cpriest@sidley.com ALSO PRESENT: Sam Kitchens Jeanette Teckman (Via Zoom) Katy Johnson (Via Zoom)																			
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<div style="text-align: center;">INDEX</div> Appearances 2 SHARMISTHA DUBEY as 30(b)(6) Representative of Match Group, Inc. EXAMINATION BY MR. TEPFER 7 EXAMINATION BY MR. MUNDEL 245 Signature and Changes256 Reporter's Certification259 <div style="text-align: center;">EXHIBITS</div> <table border="0"><thead><tr><th>NO.</th><th>DESCRIPTION</th><th>PAGE(S)</th></tr></thead><tbody><tr><td>EXHIBIT 1</td><td>Plaintiff Federal Trade Commission's Amended Notice of Rule 30(b)(6) Deposition of Defendant Match Group, Inc.,</td><td>23</td></tr><tr><td>EXHIBIT 2</td><td>MATCHFTC672169-2175 Amended and Restated Limited Liability Compan Agreement of Match.com, L.L.C.</td><td>41</td></tr><tr><td>EXHIBIT 3</td><td>CONFIDENTIAL-FTC v. Match, Case No. 3:19-cv-02281-K MATCHFTC774684-4685 Match Group, Inc., Q4 2021 Org Chart</td><td>59</td></tr><tr><td>EXHIBIT 4</td><td>CONFIDENTIAL - FTC v, Match, Case No. 3:19-CV-02281-K MATCHFTC777052-7054 January 1, 2018 Written Consent of The Sole Member of Match Group, LLC,</td><td>63</td></tr><tr><td>EXHIBIT 5</td><td>CONFIDENTIAL - FTC v. Match, Case No 3:19-cv-02281-K MATCHFTC742346-2409 Match Group North America Org Chart</td><td>106</td></tr></tbody></table>	NO.	DESCRIPTION	PAGE(S)	EXHIBIT 1	Plaintiff Federal Trade Commission's Amended Notice of Rule 30(b)(6) Deposition of Defendant Match Group, Inc.,	23	EXHIBIT 2	MATCHFTC672169-2175 Amended and Restated Limited Liability Compan Agreement of Match.com, L.L.C.	41	EXHIBIT 3	CONFIDENTIAL-FTC v. Match, Case No. 3:19-cv-02281-K MATCHFTC774684-4685 Match Group, Inc., Q4 2021 Org Chart	59	EXHIBIT 4	CONFIDENTIAL - FTC v, Match, Case No. 3:19-CV-02281-K MATCHFTC777052-7054 January 1, 2018 Written Consent of The Sole Member of Match Group, LLC,	63	EXHIBIT 5	CONFIDENTIAL - FTC v. Match, Case No 3:19-cv-02281-K MATCHFTC742346-2409 Match Group North America Org Chart	106	Page 3
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	EXHIBIT 6 FOIA Confidential 112 MATCHFTC405364-5365 December 02, 2015 email from Sam Yagan to Sydney Lam; Subject: RE: Terms EXHIBIT 7 FOIA Confidential 128 MATCHFTC568737-8738 May 04, 2013 email from Michele Watson to Atin Kulkarni; Subject: Re: Member Suggestions & Survey Comments for April EXHIBIT 8 FOIA Confidential 143 MATCHFTC000145-0150 Match.com Terms of Use Agreement EXHIBIT 9 Defendant Match Group, Inc's Second Amended Responses and Objections to Plaintiff Federal Trade Commission's First Set of Interrogatories 147 EXHIBIT 10 CONFIDENTIAL-FTC V. Match. Case No. 3:19-cv-02281-K MATCHFTC827057-7058 10/18/2018 email from Ian Purves to Adrian Ong; Subject: RE: Match and PM Chargeback Rates - Summary was executed at 10/18/2018 3:02:02 PM 152 EXHIBIT 11 Match Group, Inc.'s Initial Disclosures 156 EXHIBIT 12 FOIA Confidential 159 MATCHFTC603392-3393 January 21, 2016 email from Adrian Ong to steven Bailey; Sbjct: RE: 1 slide on Refund Policy	
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	EXHIBIT 13 FOIA Confidential 167 MATCHFTCS43664-3665 February 24, 2016 email from Sharmistha Dubey to Sydney Lam; Subject: FW: Resignation flow EXHIBIT 14 FOIA Confidential 177 MATCHFTCS43542 February 18, 2016 email from Sydney Lam to Sushil Sharma; Subject: RE: Resignation flow EXHIBIT 15 PowerPoint Deck: "Not just another broken window Account Settins Redesign" EXHIBIT 16 FOIA Confidential 193 MATCHFTCS45967-5972 July 13, 2016 email from Sharmistha Dubey to Tom Cox; Subject: Re: Deep Dive with Gb on Thursday EXHIBIT 17 CONFIDENTIAL-FTC v. Match, Case No. 3:19-cv-02281-K MATCHFTC680143-0145 59/2016 email from Kris Auderer to Lakshmi Rengarajan; Subject: RE: Match Lunch & Listen Recap EXHIBIT 18 FOIA Confidential 205 MATCHFTC323458-3459 July 01, 2016, email from Brett Richards to Kris Auderer; Subject: RE: Cancel account confirmation EXHIBIT 19 FOIA CONFIDENTIAL May 15, 2017 correspondence from Hogan Lovells to Zachary A. Keller; Re: First Production In Response to Civil Investigative Demand issued to Match Group, Inc. on March 14, 2017 212	Page 5

1 EXHIBIT 20 FOIA Confidential 228 MATCHFTC537085-7086 2 January 12, 2016 email from Sharmistha Dubey to Michael 3 Dunn; Subject: FW: Reverting a decision - want to loop you in 4	1 MR. TEPFER: And anyone on Zoom, please? 2 MR. MUNDEL: We have Jeanette Teckman and 3 Katy Johnson, in-house counsel on Zoom. 4 BY MR. TEPFER: 5 Q. And, Ms. Dubey, would you mind stating your 6 name for the record? 7 A. Yes, it is Sharmistha Dubey. 8 Q. And do you also go by Shar? 9 A. Yes, I do. 10 Q. So, Ms. Dubey, do you understand that you 11 were just given an oath and swore to tell the truth 12 under penalty of perjury? 13 A. I do. 14 Q. And do you understand what that means? 15 A. I do. 16 Q. And do you understand that is the same as 17 if you were testifying in court here today? 18 A. I do. 19 Q. Is there any reason that you can't testify 20 accurately or truthfully today? 21 A. No. 22 Q. And you're not on any medication that would 23 affect your memory or ability to testify accurately or 24 truthfully today? 25 A. No.
5 EXHIBIT 21 FOIA Confidential 234 MATCHFTC536801-6802 January 06, 2016 email 6 fromSharmistha Dubey to Steven Bailey; Subject: Re: 2016 GM 7 Plan - Product Initiatives 8 EXHIBIT 22 FOIA Confidential 237 MATCHFTC519878-9881 January 10, 2017 email from 9 Sushil Sharma to Alexis Ferraro; Subject: RE: TV - 10 launching new product features 1H 2017 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1 THE REPORTER: Would you raise your right 2 hand, please. 3 THE WITNESS: (Complied) 4 THE REPORTER: Do you swear or affirm that 5 the testimony you are about to give in this case will 6 be the truth, the whole truth, and nothing but the 7 truth? 8 THE WITNESS: I do. 9 SHARMISTHA DUBEY as 30(b)(6) Representative of Match 10 Group, Inc. 11 having been duly sworn, testified as follows: 12 EXAMINATION 13 BY MR. TEPFER: 14 Q. Good morning, Ms. Dubey. My name is Reid 15 Tepfer and this is my colleague Sarah Zuckerman. We 16 represent the FTC in litigation against Match Group 17 Inc. and Match Group, LLC, which is currently pending 18 in the Northern District of Texas. 19 MR. TEPFER: If folks could introduce 20 themselves? 21 MR. MUNDEL: Ben Mundel from Sidley Austin. 22 MS. PRIEST: Chelsea Priest from Sidley 23 Austin. 24 MR. KITCHENS: Samuel Kitchens, in-house 25 counsel at Match Group.	1 Q. If you don't understand my question or hear 2 me, just let me know. I can repeat, rephrase, speak 3 up, whatever you need. 4 A. Sure. 5 Q. We can also take breaks whenever you would 6 like; I'd just ask if there is a question pending, if 7 you could please answer that question before the break, 8 if that's okay with you. 9 A. That sounds good. 10 Q. Your lawyer may object periodically. That 11 of course doesn't mean that you don't answer the 12 question, unless, you know, he has specifically 13 instructed you not to; and if that happens, we can 14 discuss it at that time. Do you understand? 15 A. Yes. 16 Q. Okay. So you are here today as the 17 30(b)(6) designee or representative for Match Group, 18 Inc.; is that correct? 19 A. That is right. 20 Q. Are you employed by Match Group, Inc.? 21 A. No. 22 Q. And -- 23 A. I am -- so, I'm not employed by Match 24 Group. I am on the -- a director on the board. 25 Q. And what does that mean, to be a director
Page 7	Page 9

<p>1 on the board?</p> <p>2 A. I am a member of the board of directors who</p> <p>3 oversees the public company.</p> <p>4 Q. And just for -- to make things a bit easier</p> <p>5 today, instead of me saying, you know, "Defendant Match</p> <p>6 Group, Inc.," over and over, is it okay if I say</p> <p>7 Defendant MGI or MGI; will you know what I mean?</p> <p>8 A. Yes, MGI is fine.</p> <p>9 Q. And when I talk about defendant MG, LL --</p> <p>10 or "Defendant Match Group, LLC," is it okay if I just</p> <p>11 say MG LLC or Defendant MG LLC, will you know what</p> <p>12 mean?</p> <p>13 A. Sure.</p> <p>14 Q. Okay. So, were you previously employed by</p> <p>15 defendant MGI?</p> <p>16 A. Yes.</p> <p>17 Q. What time period?</p> <p>18 A. I want to be careful I answer the MGI</p> <p>19 question. I think MGI came into existence after we</p> <p>20 went public to the best of my knowledge, so that would</p> <p>21 have been 2016, end of 2015, early 2016 up until end of</p> <p>22 May 2022.</p> <p>23 Q. And what was your position during that time</p> <p>24 period at MGI?</p> <p>25 A. The first couple of years, 2016 and 2017, I</p> <p style="text-align: right;">Page 10</p>	<p>1 products.</p> <p>2 Q. So when were you at -- in this position at</p> <p>3 Match Group North America, what company was actually</p> <p>4 your employer?</p> <p>5 MR. MUNDEL: We will object to the form.</p> <p>6 Go ahead.</p> <p>7 A. I think there was Match Group, LLC, which</p> <p>8 was the operating company that operated a few brands,</p> <p>9 was probably the entity that paid my paycheck if that's</p> <p>10 sort of your question. And that was primarily designed</p> <p>11 for efficiency and, you know, there was one benefits</p> <p>12 and payroll processing group there that wrote out our</p> <p>13 checks.</p> <p>14 BY MR. TEPFER:</p> <p>15 Q. And to your knowledge, when you had this</p> <p>16 position at Match Group North America, did you also</p> <p>17 have a position at Match Group, Inc.?</p> <p>18 A. No.</p> <p>19 Q. And so when you had this position at Match</p> <p>20 Group North America, my understanding is you believed</p> <p>21 your paycheck was paid by Match Group, LLC; is that</p> <p>22 correct?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. And when you had this position at Match</p> <p>25 Group North America and were being paid by Match Group,</p> <p style="text-align: right;">Page 12</p>
<p>1 was actually president of Match Group North America.</p> <p>2 And then in 2018 I became president of Match Group</p> <p>3 overall. And in 2020, early 2020, I became CEO of</p> <p>4 Match Group.</p> <p>5 Q. And is that Match Group, Inc., when you say</p> <p>6 Match Group?</p> <p>7 A. Correct, yes.</p> <p>8 Q. What's Match Group North America?</p> <p>9 A. Match Group North America is just an</p> <p>10 aggregated -- aggregation of a few operating companies</p> <p>11 that have their development teams, engineering teams,</p> <p>12 et cetera, based out of North America. So at that time</p> <p>13 it was a few -- a handful of different businesses.</p> <p>14 Q. So when you say Match Group North America,</p> <p>15 you are not referring to like a particular company, you</p> <p>16 are referring to a group of companies?</p> <p>17 A. It is actually -- the Match Group North</p> <p>18 America is just a -- the oversight role that I had was</p> <p>19 overseeing four different operating companies that were</p> <p>20 based in North America.</p> <p>21 Q. What are those four operating companies?</p> <p>22 A. Match.com, OKCupid, Overture is the</p> <p>23 brand -- and it's easier for me to say the brands</p> <p>24 because those are the consumer brands that everybody</p> <p>25 knows them by -- Plenty of Fish, and the Affinity</p> <p style="text-align: right;">Page 11</p>	<p>1 LLC, you oversaw, you said, OKCupid, Plenty of Fish,</p> <p>2 Match.com, and was it Tinder also?</p> <p>3 A. No, not initially. In 2017 I was asked to</p> <p>4 wear an additional hat and become the COO of Tinder,</p> <p>5 because we were going through a particular period in</p> <p>6 the history and lifecycle of that company, and because</p> <p>7 of my history, I was tapped to go help Tinder out.</p> <p>8 Q. And I apologize if I am asking you to</p> <p>9 repeat yourself, but I think you -- there was a fourth</p> <p>10 company you said, when you had this position at Match</p> <p>11 Group, LLC, that you were overseeing. Do you -- would</p> <p>12 you mind reminding me of what the fourth one was?</p> <p>13 A. Yes. It was an acquisition we had done</p> <p>14 called People Media and they had a few brands that they</p> <p>15 ran.</p> <p>16 Q. Okay. Thank you.</p> <p>17 So, in 2020 you became Match Group, Inc.</p> <p>18 CEO; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And how long did you hold that position?</p> <p>21 A. About two-and-a-half years.</p> <p>22 Q. Okay. And so you recently stepped down</p> <p>23 from that position?</p> <p>24 A. End of May 2022.</p> <p>25 Q. Did you take a position elsewhere?</p> <p style="text-align: right;">Page 13</p>

<p>1 A. No.</p> <p>2 Q. Did you retire?</p> <p>3 A. Yes, I have transitioned to a different</p> <p>4 chapter of my life which is mostly advisory.</p> <p>5 Q. Okay. Was there a time when you were</p> <p>6 simultaneously CEO of Match Group Inc. and Match Group,</p> <p>7 LLC?</p> <p>8 A. It is possible that technically I was</p> <p>9 designated the CEO of Match Group, LLC, but really the</p> <p>10 way we operated, I was CEO of the public company, Match</p> <p>11 Group, Inc., which is a holding company, of a bunch of</p> <p>12 operating brands, and each of these operating brands</p> <p>13 has a fairly autonomous product, engineering,</p> <p>14 marketing, customer care, and a few other functions led</p> <p>15 by a GM or CEO of that company. So, that's how we</p> <p>16 mostly operated is these operating brands have their</p> <p>17 own groups, a separate platform, their own technology</p> <p>18 stacks, they have their leader, and then all their</p> <p>19 financials rolled out to the MGI level.</p> <p>20 Q. And when you were MGI CEO what were your</p> <p>21 roles and responsibilities?</p> <p>22 A. Since M -- Match Group, Inc. was a public</p> <p>23 company, some of the main responsibilities is reporting</p> <p>24 out to the street, the investors, shareholders,</p> <p>25 managing the board of directors, and also we did -- I</p> <p style="text-align: right;">Page 14</p>	<p>1 did talk to him together.</p> <p>2 Q. And what sorts of things would you discuss</p> <p>3 with Greg Blatt?</p> <p>4 MR. MUNDEL: Object to the form. Time</p> <p>5 period. Vague.</p> <p>6 A. Yes, and again, look, you have to be</p> <p>7 specific. It depends on what we were talking about,</p> <p>8 but if the -- if your question is largely around what</p> <p>9 sort of information does an operating leader give to</p> <p>10 the -- to the MGI CEO for instance, the types of things</p> <p>11 I would say are an annual strategic plan and budget,</p> <p>12 that would be something we would discuss. We would</p> <p>13 have monthly forecast check-ins where it was largely</p> <p>14 around how these operating businesses or any of these</p> <p>15 operating businesses were tracking relative to their</p> <p>16 forecast, and if there were any major deviances against</p> <p>17 what the plan was, why, and so on. Those would be the</p> <p>18 primary things that we would discuss. And, of course,</p> <p>19 there's ad hoc things that would emerge.</p> <p>20 It's a big, complicated business. If</p> <p>21 something of -- you know, something major would come</p> <p>22 up, that would be something we would discuss.</p> <p>23 BY MR. TEPFER:</p> <p>24 Q. And can you think of any examples of some</p> <p>25 of, I guess, major issues that you discussed with Greg</p> <p style="text-align: right;">Page 16</p>
<p>1 did have the power to hire and fire the leaders of</p> <p>2 these operating businesses. But all the other</p> <p>3 day-to-day of these operating businesses were handled</p> <p>4 by the leaders that we had.</p> <p>5 Q. And during the time that you were -- was it</p> <p>6 president of Match Group North America -- who did you</p> <p>7 report to?</p> <p>8 A. I believe I reported to Mandy Ginsberg.</p> <p>9 Q. And who reported to you concerning the</p> <p>10 different platforms?</p> <p>11 A. I can't remember who it was because all the</p> <p>12 leaders of the companies reported into Mandy, and I</p> <p>13 don't believe I had any particular direct, direct</p> <p>14 employee, but Mandy and I worked together quite a bit</p> <p>15 in solving these problems.</p> <p>16 I probably had direct employees; I can't</p> <p>17 remember who they were.</p> <p>18 Q. And who was the CEO of Match Group, Inc. at</p> <p>19 the time that you were president of Match Group North</p> <p>20 America?</p> <p>21 A. It was Greg Blatt.</p> <p>22 Q. And did you report to him concerning the</p> <p>23 various plat -- or dating websites that you were</p> <p>24 overseeing?</p> <p>25 A. Actually Mandy would, and she and I often</p> <p style="text-align: right;">Page 15</p>	<p>1 Blatt during the time that you were president of Match</p> <p>2 Group North America?</p> <p>3 A. I -- I can't remember specifics at that</p> <p>4 time, but if you are getting to a similar sort of</p> <p>5 set-up, when I was the MGI -- when I was the CEO of</p> <p>6 Match Group, Inc., you know, things like the pandemic</p> <p>7 and lockdown and shutdown, that would be something I</p> <p>8 would -- because that happened during my tenure, that</p> <p>9 was a big topic that I would discuss with the operating</p> <p>10 leaders of those businesses.</p> <p>11 There were -- there was a lot of -- 2020</p> <p>12 was a challenging year relative to social justice</p> <p>13 issues. Post George Floyd, there was a lot of employee</p> <p>14 activism in general, sort of issues with our employee</p> <p>15 set in North America in particular. Those would be</p> <p>16 issues that I would discuss with the leaders of the</p> <p>17 businesses who had U.S.-based employees, for instance.</p> <p>18 Q. What about, like, for example, major</p> <p>19 advertising campaigns, is that something that in your</p> <p>20 role as MGI CEO you would discuss with the brand</p> <p>21 leaders?</p> <p>22 A. No, I wouldn't.</p> <p>23 Q. Would -- to your knowledge, did other Match</p> <p>24 Group, Inc. CEOs discuss major advertising campaigns</p> <p>25 with leaders?</p> <p style="text-align: right;">Page 17</p>

<p>1 MR. MUNDEL: Object. You are asking her in 2 her corporate capacity or individual knowledge? 3 MR. TEPFER: Oh. That -- sorry. That was 4 in corporate capacity. 5 MR. MUNDEL: What topic is that on? 6 MR. TEPFER: I think it's probably 5. 7 MR. MUNDEL: You can answer. 8 A. I'm not sure I can remember specifics, but 9 one of the things, just by virtue of us having been 10 with the business and have institutional knowledge of 11 particular areas, it wouldn't be unusual for one of the 12 operating brand leaders to tap into our expertise on a 13 consulting basis and, you know, for me marketing was 14 not my area of expertise, so that's not something 15 people would come to me very often unless there was a 16 big marketing spend that they want to put behind a 17 campaign that they may come to me to discuss. 18 But, you know, Greg Blatt was a -- he was a 19 very good writer, and he loved writing in general, like 20 scripts, et cetera, he's written script -- screenplays, 21 et cetera, and so it's possible that, you know, some of 22 the marketing folks, while they were coming up with the 23 new campaign they would consult with him on a handful 24 of specific things. 25 But it's not our role and it's not humanly</p> <p style="text-align: right;">Page 18</p>	<p>1 BY MR. TEPFER: 2 Q. And as far as you know, you are the only 3 one that used that email address? 4 A. Yes, Sharmistha.Dubey. I am fairly unique. 5 MR. MUNDEL: We looked for a second one and 6 couldn't find a second person with that name. 7 THE WITNESS: Sharmistha Dubey, yes. 8 MR. MUNDEL: It's probably safe. 9 BY MR. TEPFER: 10 Q. So, in your positions at MGI and MG LLC, 11 did you have reason to become familiar with the MGI 12 corporate structure? 13 A. If the question is while I was the CEO was 14 I familiar with it, no, that was having the -- that was 15 largely, you know, said -- the legal -- the lawyers 16 would be more familiar with it and I didn't really have 17 quite the need to be familiar with it, but, as 18 preparation for this deposition, I have done some 19 homework on it. 20 Q. And are you familiar with the relationship 21 between MGI and MG LLC? 22 A. I do. 23 Q. And are you familiar with MGI's policies 24 and procedures relating to consumer chargebacks? 25 A. MGI has a policy -- MGI does not have any</p> <p style="text-align: right;">Page 20</p>
<p>1 possible for someone at the MGI CEO level to be 2 reviewing marketing campaigns across the brands. 3 BY MR. TEPFER: 4 Q. What was your email address when you worked 5 at Match Group? 6 A. So there was a -- over time, I've had many. 7 It started out as Match.com, because Matchgroup.com was 8 a very challenging where we had to go through a lot of 9 IT rigmarole to actually get that domain. Eventually I 10 do think there was an email address that eventually 11 became Matchgroup.com. 12 I've had Gotinder.com during the time that 13 I was -- 14 Q. And what was the full email? 15 A. I've had many different versions of it. 16 There were probably shortcuts too, but I would imagine 17 it's Sharmistha.Dubey at any of these domains. 18 Q. Okay. And so if there is an email address 19 with your name at Match.com for example, is it safe to 20 assume that that is your email address? 21 MR. MUNDEL: Object. 22 You can answer if you know. 23 A. In the documents, if you find something 24 that says Sharmistha.Dubey@Match.com, yes, that would 25 be me.</p> <p style="text-align: right;">Page 19</p>	<p>1 policies related to consumer chargebacks. 2 Q. Sorry. To rephrase, are you familiar with 3 Match Group -- or sorry -- with Match.com's policies 4 and procedures with regard to consumer chargebacks? 5 MR. MUNDEL: Object as beyond the scope. 6 You can answer in your personal capacity. 7 A. Yeah, I'm sure they do, but I'm not 8 familiar with any specifics. 9 BY MR. TEPFER: 10 Q. And similarly, are you familiar with 11 Match.com's cancellation procedures for consumer 12 subscriptions? 13 MR. MUNDEL: Object as beyond the scope. 14 You can answer in your personal capacity. 15 A. I am not familiar with the specifics. I 16 know they have one, but I'm not familiar with the 17 specifics. 18 BY MR. TEPFER: 19 Q. And similarly for refund policies at 20 Match.com, did you have reason to become familiar with 21 those during your time working for Match Group? 22 MR. MUNDEL: I am going to object as beyond 23 the scope. 24 You can answer in your personal capacity. 25 And you are asking not whether she knows</p> <p style="text-align: right;">Page 21</p>

<p>1 team, with our lawyers, and one particular session with 2 the treasury, finance, accounting and tax.</p> <p>3 Q. And how many hours total would you estimate 4 that you spent in preparation for today's testimony?</p> <p>5 A. As I said, I think it is a better part of 6 three to four working days, full working days.</p> <p>7 Q. And are you receiving any benefits in 8 exchange for testifying today?</p> <p>9 A. I am not.</p> <p>10 Q. And so you're not being compensated for 11 your testimony?</p> <p>12 A. Absolutely not.</p> <p>13 Q. Do you own any MGI stock?</p> <p>14 A. I do.</p> <p>15 Q. How much?</p> <p>16 A. I --</p> <p>17 MR. MUNDEL: We would object.</p> <p>18 A. I -- I don't remember, but these were all 19 grants given to me when I was employed and I had an 20 actual role with the company.</p> <p>21 BY MR. TEPFER:</p> <p>22 Q. And do you have any family members that 23 work for Match Group properties?</p> <p>24 A. No.</p> <p>25 Q. Is it -- so, Match.com, is that within</p> <p style="text-align: right;">Page 26</p>	<p>1 She's only been designated to speak on 2 behalf of -- on particular topics. I mean, I haven't 3 instructed her not to answer --</p> <p>4 MR. TEPFER: Sure.</p> <p>5 MR. MUNDEL: -- but her testimony is not on 6 behalf of MGI.</p> <p>7 MR. TEPFER: I -- yeah, I have to disagree 8 on that particular -- I -- I understand if, you know, 9 it happens to be the case that, because this wasn't a 10 noticed topic she wasn't prepared to speak on it, but 11 she's still here today as a representative of MGI.</p> <p>12 MR. MUNDEL: What is your -- are you 13 suggesting that she can provide testimony on behalf of 14 MGI outside the scope of what you have noticed?</p> <p>15 MR. TEPFER: Yes.</p> <p>16 MR. MUNDEL: What is the basis for that?</p> <p>17 MR. TEPFER: I can provide a few cases. So 18 the -- you know, the reasonable particularity 19 requirement of 30(b)(6), that's a minimum of what the 20 corporate designee has to prepare for. It's not the 21 maximum of what I'm allowed to ask the corporate 22 designee concerning.</p> <p>23 So, you know, that's what she has to 24 prepare for, it's not a limit on what the corporate 25 designee has to discuss. And I can provide case cites</p> <p style="text-align: right;">Page 28</p>
<p>1 Match Group, Inc.'s portfolio of brands; is that 2 correct?</p> <p>3 A. Match.com is one of the operating brands 4 that's part of the portfolio of companies that MGI 5 holds.</p> <p>6 Q. And would you agree that it's accurate to 7 say that Match Group, Inc. provides its customers 8 digital technologies through its portfolio companies?</p> <p>9 MR. MUNDEL: Object to the form. Beyond 10 the scope.</p> <p>11 You can answer in your personal capacity.</p> <p>12 A. I'm not sure what the question means.</p> <p>13 MR. TEPFER: If I could just clarify, I 14 believe -- you know, I certainly understand if, you 15 know, the objection's about beyond the scope, but I 16 believe she would -- you know, if she's able to 17 testify, I believe she would still need to testify in 18 her capacity as Match Group, Inc.'s corporate 19 representative, even if it's outside of the noticed 20 topics. There's just not an obligation to have 21 prepared for topics outside of the noticed topics.</p> <p>22 MR. MUNDEL: I don't understand exactly 23 what you are saying, but if it's -- if you are asking 24 her a question beyond the scope of the noticed topics, 25 then she's not testifying on behalf of MGI.</p> <p style="text-align: right;">Page 27</p>	<p>1 if necessary on that point.</p> <p>2 MR. MUNDEL: Yes, please provide those case 3 points.</p> <p>4 MR. TEPFER: So Eng-Hatcher versus Sprint, 5 and that's number 07 Civ. 7350 2008 WL4104015, Southern 6 District New York, August 28th, 2008.</p> <p>7 UniRAM Tech Inc. versus Monolithic Systems 8 Tech Inc., and that's 2007 WL915225, and that's the 9 Northern District of California, March 23rd, 2007.</p> <p>10 McMahon versus Presidential Airlines, Inc., 11 and that's 2006 WL535979.</p> <p>12 MR. MUNDEL: Can you give that number 13 again?</p> <p>14 MR. TEPFER: Sorry. 2006 WL5359797, and 15 that's Northern District California, August 25th, 2016.</p> <p>16 But -- but, yes, in essence, my point is 17 simply that these noticed topics are the minimum of 18 what has to be prepared for, but not a limitation on 19 the corporate designee's testimony, and so I don't 20 believe it's appropriate to limit her testimony to 21 being in her personal capacity.</p> <p>22 MR. MUNDEL: So we disagree with that as a 23 legal proposition.</p> <p>24 MR. TEPFER: Okay.</p> <p>25 MR. MUNDEL: We're happy to read those</p> <p style="text-align: right;">Page 29</p>

<p>1 cases and read them for what they're worth.</p> <p>2 But as a matter of continuing the</p> <p>3 testimony, the witness has been designated only on</p> <p>4 particular topics, not on other topics, so she is here</p> <p>5 to testify about those topics as we have agreed to</p> <p>6 revise them to be reasonable, and so we will continue</p> <p>7 to object as beyond the scope for anything beyond</p> <p>8 those --</p> <p>9 MR. TEPFER: Sure, I just wanted to explain</p> <p>10 our position.</p> <p>11 MR. MUNDEL: Sure.</p> <p>12 BY MR. TEPFER:</p> <p>13 Q. So generally speaking, what is Defendant</p> <p>14 Match Group, Inc.?</p> <p>15 A. What is Match Group, Inc.?</p> <p>16 Q. Yes.</p> <p>17 A. Match Group, Inc., is a holding company</p> <p>18 that is public -- its stock is publicly traded, and it</p> <p>19 has a portfolio of operating companies that run a</p> <p>20 number of dating and social connection brands, consumer</p> <p>21 brands.</p> <p>22 Q. And when you say holding company, what do</p> <p>23 you mean by that?</p> <p>24 A. It is a holding company that the businesses</p> <p>25 are managed on the operating company levels, their</p> <p style="text-align: right;">Page 30</p>	<p>1 A. I believe in Q4 of 2015.</p> <p>2 Q. And so MGI, Defendant MGI was previously</p> <p>3 owned by IAC, Inc.; is that correct?</p> <p>4 A. I don't think MGI existed. I couldn't tell</p> <p>5 you what the -- what the entity was, but yes, IAC was</p> <p>6 the public company, holding company, that owned these</p> <p>7 assets.</p> <p>8 Q. And when -- when IAC owned those assets,</p> <p>9 what was the company that operated Match.com?</p> <p>10 MR. MUNDEL: Object as beyond the scope.</p> <p>11 A. I won't get it right. I didn't look back</p> <p>12 and see the whole sort of chronology of what happened.</p> <p>13 BY MR. TEPFER:</p> <p>14 Q. When was Match Group, Inc., spun off from</p> <p>15 IAC, Inc.?</p> <p>16 MR. MUNDEL: Beyond the scope.</p> <p>17 You can answer if you know.</p> <p>18 A. So as I said, it went public in fall of --</p> <p>19 Q4 of 2015, so that is when it would have -- public</p> <p>20 shareholders could buy stock in the company; however,</p> <p>21 IAC remained a majority shareholder up until -- I won't</p> <p>22 get the timeline right -- but 2020 I think, but</p> <p>23 somebody should confirm that.</p> <p>24 BY MR. TEPFER:</p> <p>25 Q. When was Match Group, LLC, created?</p> <p style="text-align: right;">Page 32</p>
<p>1 financials are rolled up. Match Group, Inc., is</p> <p>2 responsible for reporting out the overall consolidated</p> <p>3 financials, and so that's what it is.</p> <p>4 Q. And when you say the financials are rolled</p> <p>5 up, what do you mean by that?</p> <p>6 A. It is the P&Ls of each of these operating</p> <p>7 businesses are then consolidated in full, and then it's</p> <p>8 reported out to the street on a quarterly basis.</p> <p>9 Q. Does Match Group, Inc., do any sort of</p> <p>10 coordination between the different brands within its</p> <p>11 portfolio?</p> <p>12 MR. MUNDEL: I am going to object to the</p> <p>13 form and vague as to coordination.</p> <p>14 A. Yeah, I mean, you've got to be more</p> <p>15 specific.</p> <p>16 So clearly they, you know, just even in the</p> <p>17 event of consolidating financials, they're obviously</p> <p>18 having conversations with each of these operating</p> <p>19 companies to understand what their P&L looks like -</p> <p>20 right? - so that's -- if that's coordination, that's</p> <p>21 coordination.</p> <p>22 But you've got to give me more specifics</p> <p>23 around your question.</p> <p>24 BY MR. TEPFER:</p> <p>25 Q. And when did Match Group, Inc., go public?</p> <p style="text-align: right;">Page 31</p>	<p>1 MR. MUNDEL: Object as beyond the scope.</p> <p>2 The witness can answer in her personal capacity.</p> <p>3 A. I couldn't tell you actually.</p> <p>4 BY MR. TEPFER:</p> <p>5 Q. Did the relationship between MGI and MG,</p> <p>6 LLC, change in any way as a result of Match Group,</p> <p>7 Inc., spinning off from IAC?</p> <p>8 MR. MUNDEL: Object as beyond the scope and</p> <p>9 vague to relationship changing in any way.</p> <p>10 A. I'm not sure. From an operate -- I'm not</p> <p>11 sure if anything changed by name or, you know, some</p> <p>12 legal technicalities, but nothing changed from a</p> <p>13 day-to-day, the way we operated the business.</p> <p>14 BY MR. TEPFER:</p> <p>15 Q. Does MGI currently play any role in</p> <p>16 overseeing the operation of Match.com?</p> <p>17 A. As I said, MGI is a holding company that</p> <p>18 does oversee the financial performance of all of its</p> <p>19 operating businesses, and that would include Match.com.</p> <p>20 Q. And when you say overseeing the financial</p> <p>21 performance of Match.com, does that include making</p> <p>22 recommendations to improve the financial performance of</p> <p>23 Match.com?</p> <p>24 A. Nobody at the MGI level has that much</p> <p>25 knowledge of each of the underlying businesses to be</p> <p style="text-align: right;">Page 33</p>

<p>1 able to make that kind of recommendation, but yes, on a 2 high level, macro level, if let's say the G -- leader 3 of that -- of a business comes and tells us, "Well, I'm 4 gonna lose a bunch of money next year," then that's a 5 conversation I as an MGI CEO will have. "Mike, I'm not 6 sure we can afford to lose the money, so much money, 7 what can you do to cut some costs," and that would be 8 the level of conversation that would happen. 9 Q. And has MGI's role in the operation of 10 Match.com changed over time, or is the role that you 11 are describing to me now the same that it's been over 12 the course of that relationship? 13 MR. MUNDEL: Objection. Vague. Go ahead. 14 A. It -- I mean, the only thing I can say is, 15 as far as I know, since MGI became a thing, it's always 16 operated that way. 17 BY MR. TEPFER: 18 Q. Did -- was Match Group, LLC, previously 19 known as Match.com, LLC, to your knowledge? 20 MR. MUNDEL: Can you just state those names 21 again? I think -- 22 MR. TEPFER: Sure. 23 BY MR. TEPFER: 24 Q. Did -- was -- was Defendant MG, LLC, 25 previously called Match.com, LLC?</p> <p style="text-align: right;">Page 34</p>	<p>1 at the federal level and so on. 2 Q. And so those companies, I guess Match Group 3 Holdings I, LLC, and Match Group Holdings II, LLC, 4 exist for tax purposes; is that correct? 5 MR. MUNDEL: Objection. Misstates 6 testimony. Beyond the scope. 7 You can answer in your personal capacity. 8 A. Yeah, it's not just tax, it's all -- I 9 think operational efficiency around financials. 10 MR. TEPFER: And I just want to state for 11 the record, I do think that these questions concerning 12 the intermediary LLCs are fairly within the scope of 13 topic 1, which is -- concerns the relationship between 14 Match Group, Inc., and Match Group, LLC, those are the 15 intermediary companies of those two companies, part of 16 the relationship, but, again, just to reiterate our 17 position that, you know, we do believe she is test -- 18 should be testifying in her corporate capacity, and, 19 you know, we will reserve the right to seek to compel, 20 you know, testimony on -- on that basis at a subsequent 21 time. 22 MR. MUNDEL: Well, two things. First, your 23 last question was whether a particular company was set 24 up for tax purposes alone. There's absolutely no topic 25 on that, particularly when the entity that you were</p> <p style="text-align: right;">Page 36</p>
<p>1 MR. MUNDEL: Objection. Beyond the scope. 2 You can answer in your personal capacity. 3 A. I actually don't know. 4 BY MR. TEPFER: 5 Q. Have you ever heard of Match.com, LLC? 6 MR. MUNDEL: Same objection. 7 A. Yeah. I couldn't be sure. 8 BY MR. TEPFER: 9 Q. Are you familiar with a company called 10 Match Group Holdings I, LLC? 11 MR. MUNDEL: Beyond the scope. 12 You can answer in your personal capacity. 13 A. Yes, I believe it is a level below MGI, 14 which is largely -- there is a Holdings Company I and a 15 Holdings Company II, and their -- their primary 16 function is to aggregate the financials and some 17 capital structures, and that came out of the spinoff of 18 IAC, to the best of my knowledge. 19 BY MR. TEPFER: 20 Q. And so you said to aggregate financials. 21 What do you mean by that? 22 A. Meaning, I think the cash is pooled at a 23 Holdings I level, if I remember right, the cash from 24 all of the operating businesses, because that's an 25 easier way to then roll up and report out and pay taxes</p> <p style="text-align: right;">Page 35</p>	<p>1 asking about was not MGI or MGL, but a completely 2 different entity, and what the intent was for that. So 3 that is far beyond any of the topics that you noticed, 4 number one. 5 Number two, as to your point about personal 6 capacity versus corporate capacity, we have not 7 instructed the witness not to answer, so this idea of 8 moving to compel strikes me as completely far-fetched. 9 But my very kind colleagues have looked at 10 the cases that you cited while I've been paying very 11 close attention to your questioning, and it's clear 12 from those cases that they don't support the FTC's 13 position here. 14 MR. TEPFER: Sure. 15 MR. MUNDEL: Nick Mahone versus 16 Presidential -- 17 MR. TEPFER: Well, if -- 18 MR. MUNDEL: Rina Moffitt -- I'm not 19 finished yet. 20 MR. TEPFER: Sorry. I know, but if -- I'm 21 happy to discuss this off the record, but it's getting 22 kind of lengthy, if we could -- I'm happy to talk off 23 the record, but I don't want to go into a case level 24 discussion while the clock's ticking -- 25 MR. MUNDEL: Well, you cited these cases</p> <p style="text-align: right;">Page 37</p>

<p>1 A. I'm not sure how to answer that. The way 2 this works, to the best of my knowledge, and, again, 3 this wasn't something I dealt with, it would have been 4 the accounting team that deals with it, but I -- you 5 know, the cash is obviously collected at the operating 6 company levels. Many of the expenses are paid out 7 there. Some expenses on behalf of these are paid up at 8 a corporate level, and then the net cash gets rolled up 9 into various -- from an accounting perspective, the net 10 cash would roll up at one of the holding level and then 11 reported out at the MGI level. 12 BY MR. TEPFER: 13 Q. And so Match Group, Inc., you said, does 14 not itself make revenue. 15 A. Correct. 16 Q. But the company incurs expenses of course; 17 is that right? 18 MR. MUNDEL: I am going to object as beyond 19 the scope, the expenses of Match Group, Inc. 20 Go ahead. 21 A. Yeah, I -- I mean, there's -- I'm sure 22 there are some expense lines related to public 23 company -- company running like audits, et cetera, 24 which are handled at the corporate cost line. But, 25 otherwise, most of our operating costs are at the</p> <p style="text-align: right;">Page 70</p>	<p>1 vague. 2 A. The MGI CEO's salary cost sits in that 3 corporate line from an accounting perspective. 4 BY MR. TEPFER: 5 Q. Does MCI play a role in the hiring of any 6 MG LLC employees? 7 A. The CEO of M -- MGI, for instance, does 8 have the right to hire and fire the operating company 9 heads, leaders. 10 Q. What about other employees? 11 A. Generally any employee that's in those 12 operating companies, they are the -- the leader of that 13 operating company is responsible for hiring and firing 14 them. Now, the -- there are some shared services which 15 a few of those leaders could be hired and fired, for 16 instance, by -- the CFO, for instance. The CFO could 17 hire the head of treasury, which is a shared service. 18 Q. And would you mind defining what a shared 19 service is? 20 A. So, there are a few functions like legal, 21 accounting, tax, mostly those kinds of services which 22 are, you know, functionally similar and they are -- 23 they don't make a difference to how the consumer views 24 the brand. Everything that is consumer-facing is part 25 of the -- the operating team that runs those brands.</p> <p style="text-align: right;">Page 72</p>
<p>1 operating cost line. 2 BY MR. TEPFER: 3 Q. To the extent that Match Group, Inc., does 4 incur costs, those costs are paid using revenue derived 5 from, I guess, the operating companies beneath it? 6 MR. MUNDEL: I am going to object to the 7 form of the question and also beyond the scope. If you 8 understand it. 9 A. I'm a little confused about what the 10 question is trying to answer, but this is the best 11 understanding I have: 12 Each of these operating companies makes 13 revenue, has expenses, they deal with it, most of it 14 themselves. There are -- there's a corporate line and 15 some shared services. Shared services generally get 16 allocated to these operating companies, but there is a 17 corporate cost line, and, yes, those checks and 18 expenses would be paid out of the cash, the rolled-up 19 aggregate cash from all of these operating businesses. 20 BY MR. TEPFER: 21 Q. Thank you. 22 And so the -- for example, the MGI CEO, his 23 or her salary would be paid out of that same pool of 24 funds from the operating companies; is that correct? 25 MR. MUNDEL: Object as beyond the scope and</p> <p style="text-align: right;">Page 71</p>	<p>1 So, product, engineering, marketing, design, analytics, 2 customer care, all of that sits independently, and they 3 are -- their sole job is to make sure they are running 4 a platform and a brand that works for the consumers 5 that they are trying to target. And they run that 6 fairly autonomously, but something like tax or treasury 7 or accounting or legal is a function that sits at -- a 8 little bit at the higher level, and they have employees 9 that allocate their time onto these different brands, 10 so -- and all of that cost would get assign -- 11 attributed from an accounting per -- purpose to that 12 particular brand, but there could be some corporate 13 level stuff that they have to deal with like paying of 14 federal tax, for instance, or managing the employee 15 stock purchase plan for instance. Those are generally 16 housed at the corporate expense line. 17 Q. So -- 18 A. But those are the people, like benefits, 19 stock plan management, a lot of accounting, tax, those 20 are shared services. 21 Q. So shared services are things that are at 22 the corporate level, those sorts of services? 23 MR. MUNDEL: Object as beyond the scope and 24 to the form. 25 A. It -- it -- from an accounting perspective,</p> <p style="text-align: right;">Page 73</p>

<p>1 those expenses hit the corporate line. 2 BY MR. TEPFER: 3 Q. And so, for example, does MG, LLC, have its 4 own legal department? 5 MR. MUNDEL: Beyond the scope. 6 A. There is a shared service legal department. 7 There are lawyers that work on specific brands, 8 sometimes all of their work is on a particular brand, 9 sometimes they spend -- you know, they wear a hat and 10 they help Tinder or they wear a hat, they help someone 11 else, for instance. 12 BY MR. TEPFER: 13 Q. So there are some attorneys that are 14 assigned to particular brands and some attorneys that 15 work for multiple brands? 16 MR. MUNDEL: Object as beyond the scope. 17 A. The -- it's -- all of the -- their times 18 are actually accounted for by some brand, they just 19 wear different hats and help and work on those 20 particular brands. 21 BY MR. TEPFER: 22 Q. In terms of who the employer is, is that 23 Match Group, Inc., for those attorneys you are 24 referencing? 25 MR. MUNDEL: Object as beyond the scope. Page 74</p>	<p>1 Q. Where does Match Group, Inc., have office 2 space, if you know? 3 MR. MUNDEL: Beyond the scope. 4 A. I don't believe Match Group, Inc., has 5 office space. 6 BY MR. TEPFER: 7 Q. Does Match Group, Inc., have employees? 8 A. To the best of my knowledge, there are only 9 three employees of Match Group, Inc. 10 Q. And has Match Group, Inc., ever had office 11 space that you know of? 12 MR. MUNDEL: Beyond the scope. 13 A. I don't believe so. 14 BY MR. TEPFER: 15 Q. And who are those three employees, the 16 current MGI employees that you are referring to? 17 A. Today, it would be Bernard Kim, who is the 18 CEO of MGI, Gary Swidler who is the CFO, and Jared Sine 19 who is the general counsel, chief legal officer. 20 Q. And the three individuals that you 21 mentioned, would you mind telling me where their 22 offices are located? 23 MR. MUNDEL: Beyond the scope. 24 Go ahead. 25 A. Bernard lives and works out of LA. Gary Page 76</p>
<p>1 A. No. I believe the corporate team, in terms 2 of getting their paychecks, just for ease, happens to 3 sit under Match Group, LLC, because a lot of them 4 happen to be in Dallas. 5 BY MR. TEPFER: 6 Q. And where is Match Group, Inc., 7 headquartered? 8 MR. MUNDEL: Beyond the scope, but you can 9 answer if you know. 10 A. I think our HQ is Dallas. So I imagine it 11 is Dallas. 12 BY MR. TEPFER: 13 Q. Does Match Group, Inc., have office space 14 in Dallas? 15 MR. MUNDEL: Beyond the scope. 16 A. I -- I don't believe so, but -- I don't 17 believe so. 18 BY MR. TEPFER: 19 Q. Does any employee of Match Group, Inc., 20 work in Dallas, to your knowledge? 21 MR. MUNDEL: Beyond the scope. 22 A. Probably one. 23 BY MR. TEPFER: 24 Q. And who are you thinking of? 25 A. Jared Sine, the general counsel. Page 75</p>	<p>1 lives and works out of New York. And Jared lives and 2 works out of Dallas. 3 BY MR. TEPFER: 4 Q. And the offices that they work from, are 5 those MG LLC offices? 6 MR. MUNDEL: Beyond the scope. 7 You can answer in your personal capacity. 8 A. Yeah, I don't -- I -- I can't tell you who 9 owns each of those different. We have many, many 10 pieces of real estate leased or owned in many parts and 11 I couldn't tell you who owns them, but I don't believe 12 MGI owns anything. 13 BY MR. TEPFER: 14 Q. You stated that the legal team is housed 15 in -- or strike that. 16 You stated, I believe, that MG LLC is the 17 actual employer for the attorneys that handle legal 18 representation for the Match Group properties; is that 19 correct? 20 MR. MUNDEL: I am going to object as being 21 beyond the scope and also misstating the testimony. 22 A. I said the shared service function of legal 23 and the lawyers get paid, their paychecks probably come 24 from Match Group, LLC, but their costs are all assigned 25 to the operating company or brand that they serve. Page 77</p>

<p>1 BY MR. TEPFER:</p> <p>2 Q. And do you know who supervises those</p> <p>3 attorneys you are referencing?</p> <p>4 MR. MUNDEL: Object as beyond the scope of</p> <p>5 the noticed topics.</p> <p>6 A. I don't know how the legal -- what the</p> <p>7 legal organization runs today. They probably have a</p> <p>8 few levels. There are -- and based again on functions.</p> <p>9 So I couldn't tell you for sure how they -- because</p> <p>10 there's litigation attorneys, there are privacy</p> <p>11 lawyers, there are all kinds of different things. I</p> <p>12 don't know how they organize.</p> <p>13 BY MR. TEPFER:</p> <p>14 Q. Does the general counsel supervise any</p> <p>15 attorneys?</p> <p>16 MR. MUNDEL: I am going to object as beyond</p> <p>17 the scope, and I'll just, due to the privilege issue</p> <p>18 here, I think you can just say "yes" or "no" or you</p> <p>19 don't know and leave it there.</p> <p>20 So the question is, does the general</p> <p>21 supervise who?</p> <p>22 MR. TEPFER: The attorneys she's</p> <p>23 referencing.</p> <p>24 BY MR. TEPFER:</p> <p>25 Q. And to be clear I'm not asking for, you</p> <p style="text-align: right;">Page 78</p>	<p>1 services represent Match Group, Inc.?</p> <p>2 MR. MUNDEL: I am going to object. You are</p> <p>3 asking her whether shared services attorneys represent</p> <p>4 Match Group, Inc.?</p> <p>5 MR. TEPFER: Yeah, the attorneys we have</p> <p>6 been discussing, whether they, as a practice, represent</p> <p>7 Match Group, Inc.</p> <p>8 MR. MUNDEL: So this is -- this is getting</p> <p>9 close to some privilege issues.</p> <p>10 So you can answer this question: Do you</p> <p>11 know whether shared services attorneys represent the</p> <p>12 entity Match Group, Inc., just give a yes or no answer,</p> <p>13 or "I don't know."</p> <p>14 A. I don't know.</p> <p>15 BY MR. TEPFER:</p> <p>16 Q. And the accounting services that you</p> <p>17 discussed, do those individuals work for Match Group,</p> <p>18 LLC?</p> <p>19 MR. MUNDEL: Beyond the scope.</p> <p>20 A. Again, practically the way it works is</p> <p>21 there are accountants who work on the specific</p> <p>22 operating companies and brands, but there are some</p> <p>23 consolidated work that is at a corporate level and they</p> <p>24 sit at the corporate level. None of them work for MGI,</p> <p>25 most likely because the corporate function gets its</p> <p style="text-align: right;">Page 80</p>
<p>1 know, any communications with attorneys or anything</p> <p>2 like that. I'm just trying to understand how it</p> <p>3 operates.</p> <p>4 MR. MUNDEL: So the question I think that</p> <p>5 you can answer is, does the general counsel supervise</p> <p>6 the legal department -- any particular attorneys at --</p> <p>7 do you know whether that's true or not.</p> <p>8 A. I think he has somebody reporting to him,</p> <p>9 and I can't be sure who it is.</p> <p>10 BY MR. TEPFER:</p> <p>11 Q. But he's the -- is that an attorney you are</p> <p>12 referencing that reports to him?</p> <p>13 A. Yes, that's what I mean, some --</p> <p>14 Q. And --</p> <p>15 A. Some attorney, I'm sure, reports to him.</p> <p>16 Q. And the general counsel is the only</p> <p>17 attorney that works at Match Group, Inc., correct?</p> <p>18 A. That is correct.</p> <p>19 Q. So this would be an attorney that works for</p> <p>20 Match Group, LLC, you are referring to?</p> <p>21 MR. MUNDEL: Object as beyond the scope.</p> <p>22 A. I couldn't tell you. I don't know how they</p> <p>23 are organized.</p> <p>24 BY MR. TEPFER:</p> <p>25 Q. Do the attorneys in, I guess, shared</p> <p style="text-align: right;">Page 79</p>	<p>1 paychecks out of Match Group, LLC, they probably get</p> <p>2 their paychecks from Match Group, LLC, but again, from</p> <p>3 an accounting perspective, the costs are either</p> <p>4 allocated to the various brands that they spend time</p> <p>5 working on, or the corporate line.</p> <p>6 BY MR. TEPFER:</p> <p>7 Q. And those arrangements that you are</p> <p>8 referencing about cost allocation, are those</p> <p>9 memorialized in contractual agreements?</p> <p>10 MR. MUNDEL: Object as beyond the scope.</p> <p>11 Go ahead.</p> <p>12 A. I don't know the answer to that. I know</p> <p>13 just operationally it is tracked, hours are tracked,</p> <p>14 and -- and that's how the expenses are.</p> <p>15 BY MR. TEPFER:</p> <p>16 Q. So in terms of Match Group, LLC's,</p> <p>17 location, you referenced that it was headquartered in</p> <p>18 Dallas; is that correct?</p> <p>19 MR. MUNDEL: Objection as beyond the scope.</p> <p>20 A. Yeah, there is an HQ in Dallas of Match</p> <p>21 Group, Inc.</p> <p>22 BY MR. TEPFER:</p> <p>23 Q. Of Match Group, Inc.?</p> <p>24 A. Yeah, I think the company, the public</p> <p>25 companies has an address that is Dallas.</p> <p style="text-align: right;">Page 81</p>

<p>1 Q. But it doesn't actually operate at that 2 physical address; is that correct?</p> <p>3 MR. MUNDEL: Objection. Beyond the scope.</p> <p>4 A. As I said, there's no operations at MGI 5 level. So -- and the current three employees for 6 instance, they operate out of three different parts of 7 the country.</p> <p>8 BY MR. TEPFER:</p> <p>9 Q. And those three parts of the country are 10 Los Angeles, Dallas, and New York?</p> <p>11 A. Correct.</p> <p>12 Q. Does -- do Match.com employees share office 13 space with employees of other dating platforms?</p> <p>14 MR. MUNDEL: Beyond the scope.</p> <p>15 A. Generally not, but there could be some 16 employees from other brands, if they are closer to 17 Dallas for instance, especially in this new remote 18 working paradigm that we have, they could have -- they 19 could come to the Dallas office and work, and, if there 20 is somebody who is getting a space out of Match.com's 21 office, I'm sure the -- that person's brand pays for 22 it, so it gets allocated out, that cost.</p> <p>23 BY MR. TEPFER:</p> <p>24 Q. If the MGI CEO wants to replace the MG LLC 25 CEO does it need approval from anyone at MG LLC to do</p> <p style="text-align: right;">Page 82</p>	<p>1 If, along the way, one of the operating 2 businesses deviates meaningfully from the -- small 3 changes doesn't make a difference, but if it is 4 meaningful deviance against the plan, then that is 5 something that has to be brought up to the MGI because 6 that's what they have to manage, investors and 7 shareholders, for.</p> <p>8 BY MR. TEPFER:</p> <p>9 Q. And when you say meaningful deviance, what 10 would constitute a meaningful deviance in your eyes?</p> <p>11 A. There's no defined thing. It is more a -- 12 you know, what -- let's say somebody came out with an 13 extra \$10 million of marketing spend they want to do 14 that wasn't budgeted for. That is not something that 15 will show up in the earnings beyond the expectation of 16 what the -- even the street expects, and so that is a 17 conversation that will have to happen, whether--</p> <p>18 Q. So -- oh, I'm sorry.</p> <p>19 A. Whether that's a thing to do or not.</p> <p>20 Q. And if for -- if MG -- if the CEO of MG LLC 21 had wanted to, for example, acquire another dating 22 platform as an acquisition, is that something that the 23 MG LLC CEO is obligated to get approval from the MGI 24 CEO for?</p> <p>25 MR. MUNDEL: Object as beyond the scope.</p> <p style="text-align: right;">Page 84</p>
<p>1 so?</p> <p>2 MR. MUNDEL: I am going to object as beyond 3 the scope and also incomplete hypothetical.</p> <p>4 A. As a practical matter, when I was CEO, if I 5 wanted to remove the Match.com CEO, I could do it 6 myself. It's generally not great practice to just 7 solely do that. I would talk to them -- I mean, there 8 has to be good reason. I should discuss it with the 9 board, I should discuss it with other folks and make 10 that decision. These are not easy decisions to make.</p> <p>11 BY MR. TEPFER:</p> <p>12 Q. And looking at, you know, the general 13 practice between 2013 and the present, in the instance 14 where, you know, MG LLC is assessing its budget, is 15 there a cap beyond which MG LLC has to seek authority 16 from MGI to exceed?</p> <p>17 MR. MUNDEL: Object to the form, the 18 hypothetical, incomplete.</p> <p>19 A. That is not how we operate. As I said, 20 once a year, every operating business comes up with 21 their plan, their strategy and their financial plan. 22 They -- we roll it out -- it is rolled up at the MGI 23 level because that is ultimately what gets -- has to -- 24 you know, the performance against that plan is what 25 needs to be reported out to the street.</p> <p style="text-align: right;">Page 83</p>	<p>1 Incomplete hypothetical.</p> <p>2 Go ahead.</p> <p>3 A. As I said, these operating businesses 4 are -- we call them financial companies, their big job 5 is really to operate the company, the P&L that they are 6 in ownership of. Mergers and acquisitions -- if they 7 wanted a piece of technology that they are acquiring, 8 then, you know, it does -- certainly they can go do 9 that. That's not an issue.</p> <p>10 If it's another large dating player, then 11 it's not the operating company, it will eventually be 12 managed at the MGI level if there is a big 13 mergers/acquisition target transaction that needs to 14 happen.</p> <p>15 BY MR. TEPFER:</p> <p>16 Q. Does MGI offer MG LLC employees stock 17 options?</p> <p>18 MR. MUNDEL: Objection. Beyond the scope.</p> <p>19 Do you have a topic for that, Reid?</p> <p>20 MR. TEPFER: I think topic 1, although --</p> <p>21 MR. MUNDEL: Topic 1 says nothing about 22 stock options, so it's not that topic. Do you have 23 another topic?</p> <p>24 MR. TEPFER: Not offhand. I -- I don't 25 have it in front of me, but --</p> <p style="text-align: right;">Page 85</p>

<p>1 MR. MUNDEL: He marked it as Exhibit 1 to 2 the deposition. 3 MR. TEPFER: Thanks. 4 MR. MUNDEL: So do you have a topic? 5 MR. TEPFER: No. But I'm not going to 6 engage in providing topics for each question. If you 7 want to make an objection you can go ahead and do so; 8 otherwise we need to go on. 9 MR. MUNDEL: Yeah, we do object as beyond 10 the scope, but we also make a broader objection which 11 is we've been going a few hours now, and I would say 12 80 percent of the questions are beyond the scope of the 13 noticed topics, which is improper under Rule 30(b)(6). 14 So we are going to need to have the topics -- the 15 questions focused on the topics that are at hand. 16 MR. TEPFER: We're not going to so limit 17 our questioning. 18 MR. MUNDEL: Then you are not going to be 19 complying with Rule 30(b)(6). 20 MR. TEPFER: We disagree. 21 If you wouldn't mind reading the question 22 back? 23 THE REPORTER: Question: "Does MGI offer 24 MG LLC employees stock options?" 25 MR. MUNDEL: Maintain the objection to</p> <p style="text-align: right;">Page 86</p>	<p>1 A. Again, the things like insurance is at a 2 corporate level. I -- I'm sure there's others that I 3 can't think of. 4 BY MR. TEPFER: 5 Q. And does MGI have the authority to veto MG 6 LLC management decisions? 7 MR. MUNDEL: I am going to object as to 8 incomplete hypothetical, what management decisions and 9 what folks you are referring to, and beyond the scope 10 of the noticed topics. 11 Go ahead. You can answer. 12 A. As I said, the way we operate is we 13 delegate authority to the leaders of these operating 14 businesses and we trust them to -- we hopefully hire 15 the right kind of people and trust them to make 16 decisions related to that operating business and, you 17 know, the tool -- there is no tool for vetoing 18 anything, that's not how we operate. 19 If we generally find a leader to be not 20 making good decisions for the brand, we would fire 21 them. That is a -- a more commonly used tool, and 22 there's no sort of veto process necessarily. 23 BY MR. TEPFER: 24 Q. And on the topic of firing, does any other 25 entity aside from MGI have the authority to remove MG</p> <p style="text-align: right;">Page 88</p>
<p>1 scope. 2 A. To the best of my knowledge, that -- some 3 employees have the -- are granted equity and there 4 is -- one of the instruments that we have is the MDCH 5 stock, and it is granted, but it's all accounted for in 6 terms of expenses, et cetera, at these operating 7 company -- or wherever the -- at these operating 8 company levels, basically. 9 BY MR. TEPFER: 10 Q. What about 401(k) plans, does MGI offer MG 11 LLC employees a 401(k) plan? 12 MR. MUNDEL: I am going to object as beyond 13 the scope of the noticed topics. 14 You can answer in your individual capacity 15 if you know. 16 A. And, again, this is complicated, because 17 401(k) is probably not applicable to international 18 employees, and so it is -- the 401(k) is, again, 19 administered at the corporate level. I wouldn't know 20 any more details than that. 21 BY MR. TEPFER: 22 Q. Are there any other benefits for MG LLC 23 employees that are administered by MGI? 24 MR. MUNDEL: Object as beyond the scope and 25 to the form.</p> <p style="text-align: right;">Page 87</p>	<p>1 LLC executives? 2 MR. MUNDEL: I am going to object. When 3 you are asking about other entities beyond MGI that's 4 clearly beyond the scope of the noticed topics, and if 5 you are asking about legal authority, I object as 6 calling for a legal conclusion. 7 But go ahead. You can answer to the extent 8 you know. 9 A. Yeah, I -- legally, I -- I don't know what 10 who has. But just the leaders of the business 11 generally are -- generally fall under the Match Group, 12 Inc., CEO's responsibility. 13 BY MR. TEPFER: 14 Q. Do MGI and MG LLC have any joint bank 15 accounts? 16 MR. MUNDEL: I am going to object as beyond 17 the scope when you ask about particular bank accounts. 18 You can answer if you know. 19 A. I don't know all the details of bank 20 accounts, but I would say no. 21 BY MR. TEPFER: 22 Q. And why would you say no? 23 A. The only reason I'm saying this is they 24 were trying to explain to me in that one call that I 25 had with the finance folks, bank -- different levels at</p> <p style="text-align: right;">Page 89</p>


<p>1 which banks' accounts sat, and it didn't -- I don't 2 remember catching anything that said there's a joint 3 bank account. The joint bank account term was not 4 something that I heard.</p> <p>5 Q. Are you aware if there are accounts where 6 both MGI and MG LLC employees are signatories?</p> <p>7 MR. MUNDEL: Object as beyond the scope. 8 Go ahead.</p> <p>9 A. I don't know the answer to that.</p> <p>10 BY MR. TEPFER:</p> <p>11 Q. Do you know the payment processor that is 12 used to process charges relating to Match.com?</p> <p>13 MR. MUNDEL: I am going to -- what topic is 14 that, Reid?</p> <p>15 MR. TEPFER: I -- I don't want to engage in 16 this. If you have an objection, if you believe it's 17 outside the scope, so state it.</p> <p>18 MR. MUNDEL: I certainly think it's outside 19 the scope, but if I'm wrong I'd be happy to hear it if 20 there's any topic on payment processing. Is there one?</p> <p>21 MR. TEPFER: I'm not going to engage in 22 back and forth on that.</p> <p>23 MR. MUNDEL: We object as beyond the scope 24 of the noticed topics, and also wholly inappropriate 25 given this last hour of questioning.</p> <p style="text-align: right;">Page 90</p>	<p>1 A. I don't know, but I can't imagine them 2 having -- they're all separate, they run separate, 3 they're on different platforms, completely independent, 4 tech stacks, they -- all the code is written separately 5 for most of these brands so I don't know.</p> <p>6 BY MR. TEPFER:</p> <p>7 Q. Do you know if charges have ever been 8 processed for Match.com customers on a merchant account 9 that was also used to process charges for customers of 10 other dating websites?</p> <p>11 MR. MUNDEL: I am going to object, again, 12 as well beyond the scope of the noticed topics. If you 13 wanted a topic on that you should have noticed it.</p> <p>14 You can answer in your individual capacity 15 if you know.</p> <p>16 A. I have no idea.</p> <p>17 BY MR. TEPFER:</p> <p>18 Q. So is it accurate that between 2013 and 19 today there have been a number of individuals who had 20 positions simultaneously at MG LLC and MGI?</p> <p>21 A. I don't think that's accurate. As I said, 22 there's only three employees of MGI, the CEO, the CFO, 23 and the general counsel, and they generally - generally 24 - don't have any operating roles in the underlying 25 operating companies except in for entering times on to</p> <p style="text-align: right;">Page 92</p>
<p>1 BY MR. TEPFER:</p> <p>2 Q. You can answer.</p> <p>3 A. I don't know what payment processing they 4 are using now. And again, I'm -- I would imagine it 5 depends on the app and the platform. For instance, if 6 it's the iOS app, Apple does it, I would imagine fully. 7 For the other transactions I'm not sure who they use 8 now.</p> <p>9 Q. Does MG LLC maintain all the payment 10 processors that are used -- sorry.</p> <p>11 Does MG LLC maintain all the merchant 12 accounts that are used for the processing of Match.com 13 charges for customers?</p> <p>14 MR. MUNDEL: I am going to object again, 15 beyond the scope and vague, ill-defined question.</p> <p>16 You can answer if you know.</p> <p>17 A. I haven't the vaguest idea.</p> <p>18 BY MR. TEPFER:</p> <p>19 Q. Does -- do any MGI brands utilize shared 20 merchant accounts?</p> <p>21 MR. MUNDEL: I am going to object as beyond 22 the scope. You are talking about, I think, things 23 beyond MGI and MGL, and also to the form of the 24 question.</p> <p>25 Go ahead and answer if you understand it.</p> <p style="text-align: right;">Page 91</p>	<p>1 special occasions, meaning, let's say they fired the 2 CEO of a brand and they are in the process of hiring a 3 new CEO, for that period of time they could step in and 4 wear an additional hat of being the CEO of that brand. 5 That can happen from time to time. But that's not 6 desired, it's not ideal, and not something we try -- we 7 try to avoid it for sure.</p> <p>8 Q. So is it the case that -- am I correct in 9 understanding that between, say, 2013 and the present, 10 if an individual was an executive at MGI, they would 11 not have played a role in the day-to-day operations of 12 Match.com?</p> <p>13 MR. MUNDEL: I'm just going to object as to 14 the breadth of that question.</p> <p>15 You can answer if you understand it.</p> <p>16 A. An MGI person generally would not have the 17 time to deal with Match.com day to day.</p> <p>18 BY MR. TEPFER:</p> <p>19 Q. Between 2013 and the present, did MGI at 20 any point have a COO?</p> <p>21 A. I believe Gary got an additional title, 22 addition to his title, in addition to CFO as -- and COO 23 for a couple of years. I don't know how many years, 24 but he might have had an extension to his thing.</p> <p>25 Q. So in the circumstance where an individual</p> <p style="text-align: right;">Page 93</p>

<p>1 A. I can't remember this. I -- I'm not sure. 2 I don't remember.</p> <p>3 Q. What was Mr. Blatt's position at this time? 4 A. This is what, January 2017? He was MGI's 5 CEO as well as Tinder CEO.</p> <p>6 Q. And did Ms. Ginsberg have a position at MGI 7 at this time? 8 A. In 2017? No.</p> <p>9 Q. And what about Ayesha Gilard -- 10 A. No. Gilarde.</p> <p>11 Q. I'm sorry. Gilarde. 12 Ayesha Gilarde, did she have a position at 13 MGI at that time? 14 A. Where are you seeing --</p> <p>15 Q. I'm sorry. I'm on the very last page of 16 the document and I'm looking at the email addresses 17 here.</p> <p>18 A. Sorry. Let me read this.</p> <p>19 Q. Sure.</p> <p>20 A. Okay. No, Ayesha was Match.com CMO.</p> <p>21 Q. And what does CMO stand for? 22 A. Chief marketing officer.</p> <p>23 Q. And did Mr. Thombre have an MGI position at 24 this time? 25 A. I don't believe -- I'm pretty sure no.</p> <p style="text-align: right;">Page 238</p>	<p>1 that part. Mandy is tapping into his -- his expertise 2 and making sure that she gets another point of view.</p> <p>3 Now, Greg has -- doesn't have to, and 4 oftentimes I remember she would not hear from him and 5 they're like, okay, we're going to ship this out 6 without him chiming in on anything. He doesn't have 7 to.</p> <p>8 But because it was his particular area of 9 expertise and interest, Mandy specifically would go to 10 Greg on specifically the marketing, especially new -- 11 new scripts.</p> <p>12 Q. Would Ms. Ginsberg regularly go to Greg on 13 marketing scripts like that? 14 A. This doesn't happen often. Has it 15 happened? This might be the only campaign in -- we 16 might have done or maybe we did another one. I can't 17 remember. But it would have happened like once a year 18 kind of thing.</p> <p>19 Q. Do you recall if Mr. -- or did Mr. Blatt 20 provide feedback concerning these Missed Connection 21 scripts? 22 MR. MUNDEL: Beyond the scope. 23 You can answer if you remember.</p> <p>24 A. I don't remember any of this specifics. I 25 hope he did. But I do remember the team getting</p> <p style="text-align: right;">Page 240</p>
<p>1 Q. Ms. Ginsberg appears to have provided 2 something called Missed Connections scripts in this 3 first email. Do you see that there? 4 A. I do.</p> <p>5 Q. Do you know what Missed Connection scripts 6 are? 7 MR. MUNDEL: Let me just ask. Again, this 8 wasn't a topic for 30(b)(6) so are you asking her 9 whether MGI knows or whether she personally knows? 10 MR. TEPFER: I'm just wanting to know about 11 Match Group Inc.'s role in Match.com's advertising, and 12 this appears to be Match Group Inc.'s CEO reviewing 13 scripts relating to Match.com advertising.</p> <p>14 MR. MUNDEL: So what's your question? Does 15 MGI or does she know something? 16 BY MR. TEPFER: 17 Q. Does MGI know what -- what these revised 18 Missed Connection scripts are? 19 A. So generally the question is, does MGI do 20 reviews of marketing scripts? The answer is no. I 21 never once reviewed any brand's marketing campaign 22 script.</p> <p>23 Is Greg looking at this? This is one of 24 those exception scenarios where, because Greg is a 25 screenwriter, he has -- he's -- he sort of really likes</p> <p style="text-align: right;">Page 239</p>	<p>1 frustrated that they would hear from him, he'd say yes, 2 I want to see it and then he won't respond, and they 3 keep bugging him. Again, can you -- we're on a 4 deadline, can you do it, and then sometimes he would 5 and sometimes he's, like, just go ahead and I don't 6 have time to look through this.</p> <p>7 BY MR. TEPFER: 8 Q. So was it the case that Mr. Blatt was more 9 involved in the weeds, so to speak, concerning 10 Match.com advertising? 11 MR. MUNDEL: I am going to object as to 12 scope, time period, and also vagueness as to "in the 13 weeds." 14 A. Here's what you should know: A new 15 marketing campaign is not in the weeds necessarily, 16 first of all. Actually the way a guarantee or a rule 17 or a cancellation flow, et cetera, is, but generally 18 speaking, a Match Group, Inc., CEO does not get 19 involved because there are many brands doing many 20 different marketing campaigns over time.</p> <p>21 There's a bit of history here. Greg used 22 to run Match.com back in 2009 and so he has a 23 particular affinity for this brand, and he thinks he is 24 an expert at screenwriting, too, and, again, Mandy 25 valued his opinion.</p> <p style="text-align: right;">Page 241</p>

<p>1 My guess is whoever was running Match 2 before Mandy probably didn't go to him and that was 3 okay because it's not expected, but Mandy, specifically 4 for new marketing campaigns, did go to Greg from an 5 advisory -- as an advisor. And honestly Greg didn't 6 have time in 2017, which is why often he would just -- 7 he's, like, just go ahead, I don't have time to look at 8 it or sometimes he would just look at it sometimes and 9 give some high level opinion about it, but that was it. 10 BY MR. TEPFER: 11 Q. And so you stated that Mr. Blatt had a 12 particular affinity for Match.com? 13 A. Yes, because it's our first brand and he 14 was very close to it many years ago. 15 Q. Did this result in Mr. Blatt paying 16 particular attention to Match.com over the other brands 17 during his time as Match Group Inc.'s CEO? 18 MR. MUNDEL: Object as beyond the scope. 19 Go ahead. 20 A. No, because he had no time. He was also 21 the Tinder CEO in 2017 and that's where he was spending 22 most of his time. In fact, he was not spending much 23 time on the non-Tinder portfolio. 24 BY MR. TEPFER: 25 Q. Does Match Group, Inc., maintain any data Page 242</p>	<p>1 flow? 2 Q. For example, summaries of dropout rates at 3 particular pages? 4 A. No. 5 Q. Does Match Group, Inc., have access to such 6 data? 7 A. Not directly. They can certainly ask 8 someone if they were interested in it, curious about 9 it, but not directly. 10 Q. And if a Match Group, Inc., employee was 11 interested to get that data, is there a particular 12 person at Match Group, LLC, they would contact 13 regarding that? 14 MR. MUNDEL: Beyond the scope. 15 Go ahead. 16 A. They would go to the GM or CEO of Match.com 17 and then that person would then go to whoever has 18 the -- some -- whoever's on the analytics side who has 19 the data, and that's how that data would flow. 20 BY MR. TEPFER: 21 Q. Does Match Group, Inc., have knowledge 22 concerning where that data is stored? 23 A. Absolutely not. 24 Q. Or the format of that data? 25 A. No way. It's not humanly possible to know. Page 244</p>
<p>1 relating to Match.com's online cancellation flow? 2 A. Match Group, Inc., does not maintain any 3 data of any kind. 4 Q. Has Match Group employees ever reviewed 5 such data? 6 MR. MUNDEL: Beyond the scope. 7 Go ahead. 8 A. What data? 9 BY MR. TEPFER: 10 Q. Has Match Group employees ever reviewed 11 data relating to the online cancellation flow? 12 MR. MUNDEL: Let me just be clear, Reid. 13 You know this is designated on a different top, right? 14 MR. TEPFER: I thought 32 was the separate 15 topic. I thought maybe it was 31. 16 MR. MUNDEL: I'm sorry. 17 Go ahead. 18 MR. TEPFER: No worries. 19 MR. MUNDEL: You can ask the question 20 again. 21 BY MR. TEPFER: 22 Q. Has Match Group, Inc. -- have Match Group, 23 Inc., employees ever reviewed data relating to 24 Match.com's online cancellation flow? 25 A. What is data related to online cancellation Page 243</p>	<p>1 Q. Did Match Group, Inc., ever create 2 something called The Happiness Project? 3 MR. MUNDEL: Beyond the scope. 4 You can answer if you know. 5 A. Match Group, Inc., did not create anything. 6 And I don't remember all the details of it, but I think 7 Match.com had a happiness project at some point, and I 8 can't remember timing or specifics. 9 MR. TEPFER: Do you mind if we take a short 10 break? 11 MR. MUNDEL: Sure. 12 (Break from 4:51 p.m. until 5:12 p.m.) 13 MR. MUNDEL: Ready to go back on? 14 THE REPORTER: Back on. 15 MR. TEPFER: Sure. Pass the witness. 16 MR. MUNDEL: Okay. We just have a few 17 questions. 18 EXAMINATION 19 BY MR. MUNDEL: 20 Q. Ms. Dubey, I want to talk a bit more about 21 Match Group, Inc., and Match Group, LLC, as well as 22 Match.com. 23 Let me first start with this question. Did 24 Match Group, Inc., have any involvement with 25 Match.com's cancellation flow? Page 245</p>

<p>1 A. No.</p> <p>2 Q. Did Match Group, Inc., have any involvement</p> <p>3 with Match.com's guarantee?</p> <p>4 A. No.</p> <p>5 Q. Did Match Group, Inc., have any involvement</p> <p>6 with Match.com's chargeback policy?</p> <p>7 A. No.</p> <p>8 Q. Why did Match Group, Inc., not have any</p> <p>9 involvement in those three items?</p> <p>10 A. These are very detailed in-the-weeds level</p> <p>11 of things that our operating businesses would know more</p> <p>12 about and would make decisions around.</p> <p>13 Q. So who made the decisions about Match.com</p> <p>14 cancel flow?</p> <p>15 A. It would be the Match.com product team, and</p> <p>16 most likely would be at the product team, but they</p> <p>17 could consult and get sort of the involvement of the GM</p> <p>18 or CEO of Match.com.</p> <p>19 Q. And what about the guarantee, who made</p> <p>20 decisions about Match.com's guarantee?</p> <p>21 MR. TEPFER: Objection, vague as to time.</p> <p>22 BY MR. MUNDEL:</p> <p>23 Q. Go ahead.</p> <p>24 A. It -- it would -- whenever it was done, it</p> <p>25 would be the Match.com marketing team primarily working</p> <p style="text-align: right;">Page 246</p>	<p>1 growth and consumer adoption for that matter is word of</p> <p>2 mouth. So, somebody comes, has a good experience,</p> <p>3 meets someone, goes and tells somebody else to join.</p> <p>4 That has been the driving force of this category</p> <p>5 creation in some ways. I mean, people were not online</p> <p>6 dating 25 years ago.</p> <p>7 And the second big reason for this is more</p> <p>8 than half of our business comes from returning users.</p> <p>9 So, not only does it conflate with our fundamental</p> <p>10 pieces and philosophies and principle of being consumer</p> <p>11 friendly, which is something we -- we as in me when I</p> <p>12 was in operating roles at Match.com or, quite frankly,</p> <p>13 any executive that runs these various businesses</p> <p>14 understands and tries to set the tone, but also it</p> <p>15 doesn't make business sense. Why would you want to</p> <p>16 piss off your consumers on their way out, if more than</p> <p>17 half of your business is by returning users? So it</p> <p>18 just would never make sense to do.</p> <p>19 Q. And while you were working at Match.com</p> <p>20 were customers able to effectively cancel online?</p> <p>21 MR. TEPFER: Objection. Leading.</p> <p>22 A. We had everyday thousands and thousands of</p> <p>23 users successfully cancel their subscription. Very,</p> <p>24 very small handful of people would call in to complain.</p> <p>25 A lot of times -- and we generally took every complaint</p> <p style="text-align: right;">Page 248</p>
<p>1 with the product team, if there is a product component</p> <p>2 to it, and with the final approval of the GM or CEO of</p> <p>3 Match.com.</p> <p>4 Q. And who made the decisions about</p> <p>5 Match.com's chargeback policy?</p> <p>6 MR. TEPFER: Objection. Vague.</p> <p>7 A. Again, it would be the product team,</p> <p>8 Match.com product team that could consult with other</p> <p>9 teams within Match.com, for instance, the Customer Care</p> <p>10 team, and it would be -- the highest it would go up to</p> <p>11 is the GM or CEO of Match.com.</p> <p>12 BY MR. MUNDEL:</p> <p>13 Q. Now, it's been alleged in this case that</p> <p>14 Match.com's cancellation flow is not simple. How do</p> <p>15 you respond to that allegation?</p> <p>16 A. For anybody that's ever tried to build a</p> <p>17 consumer business, especially a consumer digital</p> <p>18 business, you have to know that you design for the most</p> <p>19 optimum user experience and -- otherwise, users won't</p> <p>20 use it, and the cancellation -- and that -- that's</p> <p>21 universally true for every part of the experience, of</p> <p>22 the site experience.</p> <p>23 It's particularly true for the cancellation</p> <p>24 flow because businesses like Match.com have two primary</p> <p>25 ways, things about them? One, their main avenue for</p> <p style="text-align: right;">Page 247</p>	<p>1 seriously. The Customer Care person dealing with it</p> <p>2 would do the first level of investigation, oftentimes</p> <p>3 it would be, you know, they had just forgotten, that</p> <p>4 they sort of allege that they had canceled and we</p> <p>5 forgot, we didn't take -- you know, it didn't stick,</p> <p>6 which happens in the consumer world quite a bit.</p> <p>7 But, you know, if there was ever any kind</p> <p>8 of increase or anything coming, from time to time we</p> <p>9 would have appropriate people -- we as in when I was in</p> <p>10 the Match.com operating role -- we would have the</p> <p>11 relevant teams, the product, the engineering teams, the</p> <p>12 data analytics team, go investigate and make sure that</p> <p>13 we haven't produced a systematic bug that was causing</p> <p>14 problems or there wasn't something really that needed</p> <p>15 to be changed. And our teams -- again, I'm speaking</p> <p>16 from experience at the times when I was directly</p> <p>17 responsible for Match.com product -- we were always</p> <p>18 solving for optimizing the experience for the largest</p> <p>19 number of consumers.</p> <p>20 BY MR. MUNDEL:</p> <p>21 Q. And while you were working on Match.com and</p> <p>22 later Match Group, Inc., did you ever direct anybody to</p> <p>23 make Match.com's cancellation flow more complicated?</p> <p>24 A. Never. And as I said, that would be a very</p> <p>25 dumb business decision.</p> <p style="text-align: right;">Page 249</p>

<p>1 Q. And did you ever hear anyone else at the 2 company suggest that they should make the Match.com 3 cancellation flow more complicated? 4 MR. TEPFER: Objection. Leading. 5 A. Never. 6 BY MR. MUNDEL: 7 Q. If someone had proposed making the 8 Match.com cancellation flow more complicated, how would 9 you respond? 10 A. As I said, it would -- first of all, it 11 goes against our fundamental principle of consumer 12 friendly applications, are the only way you drive 13 consumer business growth. 14 But, again, as I mentioned, those two 15 reasons, word of mouth and repeat customers, it would 16 be a dumb decision, dumb thing to do long-term for the 17 brand. 18 Q. Now, have you heard of the phrase "tone 19 from the top"? 20 A. Yes. 21 Q. And what type of tone from the top did you 22 try to set, if any, while you were the CEO of Match 23 Group, Inc.? 24 A. Both as in my -- during my tenure at Match 25 Group, Inc., and the decade-plus experience in various</p> <p style="text-align: right;">Page 250</p>	<p>1 day it -- it's -- it's insulting, quite frankly. 2 BY MR. MUNDEL: 3 Q. Well, thank you for that, Ms. Dubey. 4 Let me just ask a few smaller points. As 5 the Match Group North America president I think you 6 testified earlier that you were technically getting a 7 payroll stub from Match Group, LLC. Do you recall 8 that? 9 A. Yes. 10 Q. And who was actually paying for your salary 11 though at that time? 12 A. So the way that worked for me, I think the 13 paychecks were signed by Match Group, LLC, but my cost, 14 my salary cost would get allocated to the business 15 where I spent time. And at that time I was spending -- 16 that particular year I was spending time on four 17 businesses, so my time and costs would get allocated to 18 those four businesses. 19 Q. And during your testimony you also 20 mentioned that Match Group, Inc., has the right to 21 replace leaders of the operating brands. Who are the 22 leaders, what positions were you referring to? 23 A. It's generally the CEO or the GM of those 24 operating businesses. 25 Q. And you also mentioned that sometimes in</p> <p style="text-align: right;">Page 252</p>
<p>1 operating roles within the various brands, I took a lot 2 of pride in working for a mission-driven company. We 3 woke up every day, every morning with a passion, and 4 mission to connect people, to find dates, 5 relationships, marriages. It's the -- the outcome, 6 this ultimate outcome of connecting people was the 7 reason we did anything, and so to be -- quite frankly, 8 I'm super offended by many of the questions from the 9 day to even insinuate that we would intentionally try 10 to mislead the customer, consumer in any way. I mean, 11 that is just so far from everything that I have spent 12 my entire -- my last 16-plus years running these 13 businesses in many different roles and capacities with 14 the utmost integrity, but most importantly to build 15 valuable consumer-facing products. 16 I hope I never have to sit and defend this 17 again, but I will say this, we -- when I started back 18 in 2006, only 3 percent of marriages happened online. 19 Today, it's close to 50 percent and that kind of 20 category -- and Match.com started it all, and to think 21 that you would have that level of consumer acceptance 22 of a brand-new way of doing something that's so 23 personal to everyone, which is meeting someone for the 24 rest of your life, that's just so preposterous I can't 25 even -- I'm sorry, I'm a little -- at the end of the</p> <p style="text-align: right;">Page 251</p>	<p>1 your role when you were the Match Group, Inc., CEO 2 folks would come to you and seek advice. Do you 3 remember that testimony? 4 A. Yes. Yes. 5 Q. And when they would seek your advice about 6 topics, did they do so in your formal CEO capacity or 7 was it something else? 8 A. Oh, it was not at all because -- in my 9 formal Match Group, Inc., CEO capacity. Most of the 10 time when I was asked for advice and to consult, it was 11 because of my institutional knowledge about this 12 category and this business and related to my expertise, 13 and often, almost every single time I would try to 14 qualify it, saying, look, this is -- back then we tried 15 this, this is what worked, this didn't work, maybe you 16 should think about it this way. But, quite frankly, 17 I'm no longer close enough to what consumers are doing 18 today, or how people are using these platforms so you 19 should take what you can from this, but you have to 20 apply it based on your current knowledge and 21 understanding of the platforms as they exist today. 22 Because I had, by then, been too distanced and far 23 removed. 24 Q. Based on that, when you gave this advice, 25 did you expect that it would be followed?</p> <p style="text-align: right;">Page 253</p>

1 State of _____	1 Reid Tepfer - 05:55:21
2	2 Sarah Zuckerman - 00:00:00
3	3 Benjamin M. Mundel - 00:17:35
4	4 Chelsea Priest - 00:00:00
5	5 I further certify that I am neither counsel
6	6 for, related to, nor employed by any of the parties or
7	7 attorneys in the action in which this proceeding was
8	8 taken;
9	9 Further, I am not a relative or employee of
10	10 any attorney of record, nor am I financially or
11	11 otherwise interested in the outcome of the action.
12	12 Subscribed and sworn to on this date:
13	13 March 17, 2023.
14	14
15	15
16	16
17	17
18	18
19	19
20	20 
21	21 Joseph D. Hendrick, CSR #947
22	22 Expiration Date: 04/30/2023
23	23 Notary Comm. Exp. 01/13/23
24	24 Veritext Legal Solutions
25	25 Firm Registration No. 571
	300 Throckmorton Street, Ste. 1600
	Fort Worth, TX 76102
	Telephone (800) 336-4000
Job No. TX5651555	
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1 REPORTER'S CERTIFICATION	1 Benjamin M. Mundel
2 DEPOSITION OF SHARMISTHA DUBEY as 30(b)(6)	2 bmundel@sidley.com
3 Representative of Match Group, Inc.	3 March 17, 2023
4 March 3, 2023	4 RE: Federal Trade Commission v. Match Group, Inc., Et Al.
5 I, Joseph D. Hendrick, Notary Public and	5 3/3/2023, Sharmistha Dubey 30(b)(6) (#5651555)
6 Certified Shorthand Reporter in the State of Texas,	6 The above-referenced transcript is available for
7 hereby certify to the following:	7 review.
8 That the Witness, SHARMISTHA DUBEY as	8 Within the applicable timeframe, the witness should
9 30(b)(6) Representative of Match Group, Inc., was duly	9 read the testimony to verify its accuracy. If there are
10 sworn by the officer and that the transcript of the	10 any changes, the witness should note those with the
11 oral deposition is a true record of the testimony given	11 reason, on the attached Errata Sheet.
12 by the witness;	12 The witness should sign the Acknowledgment of
13 I further certify that pursuant to FRCP	13 Deponent and Errata and return to the deposing attorney.
14 Rule 30(f)(1) the signature of the deponent:	14 Copies should be sent to all counsel, and to Veritext at
15 X was requested by the deponent or	15 errata-tx@veritext.com.
16 a party before the completion of the deposition and is	16
17 to be returned within 30 days from date of receipt of	17 Return completed errata within 30 days from
18 the transcript;	18 receipt of testimony.
19 _____ was not requested by the	19 If the witness fails to do so within the time
20 deponent or a party before the completion of the	20 allotted, the transcript may be used as if signed.
21 deposition;	21
22 I further certify that the amount of time	22 Yours,
23 used by each party is as follows:	23 Veritext Legal Solutions
24 //	24
25 //	25
Page 259	Page 261

EXHIBIT 7

Redacted in its Entirety

(Filed Under Seal Pursuant to Protective
Order Regarding Confidential Materials)

EXHIBIT 8

1	1	3
2	IN THE UNITED STATES DISTRICT COURT	2
3	NORTHERN DISTRICT OF TEXAS	3
4	-----	4
5	FEDERAL TRADE COMMISSION,	5
6	Plaintiff,	6
7	vs.	7
8	MATCH GROUP, INC, a corporation,	8
9	and MATCH GROUP, LLC, formerly	9
10	known as MATCH.COM, LLC, a	10
11	limited liability company,	11
12	Defendants.	12
13	-----	13
14	DEPOSITION OF DUSHYANT SARAPH	14
15	New York, New York	15
16	Thursday, June 22, 2023	16
17		17
18		18
19		19
20		20
21	Reported by:	21
22	Jeremy Frank, MPM	22
23	JOB NO. 2172	23
24		24
25		25
2	2	4
1		1
2	June 22, 2023	2
3	9:21 a.m.	3
4		4
5	Deposition of DUSHYANT SARAPH, held at	5
6	the offices of Sidley Austin, 787 Seventh	6
7	Avenue, New York, New York, pursuant to	7
8	Notice, before Jeremy Frank, a Stenographic	8
9	Court Reporter and Notary Public of the State	9
10	of New York.	10
11		11
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	ALSO PRESENT:	
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	ERICA HILLIARD	
	CHELSEA PRIEST	
	JEANETTE TECKMAN	
	I N D E X	
	WITNESS EXAMINATION PAGE	
	MR. SARAPH MR. TEPFER 8	
	MR. SARAPH MR. MUNDEL 346	
	EXHIBITS	
	EXHIBIT DESCRIPTION PAGE	
	1 FTC 774671, video deemed 12	
	Marked	
	2 FTC 672329, video deemed 31	
	Marked	
	3 MATCHFTC 752776 38	
	4 MATCHFTC 782186 60	
	5 MATCHFTC 761906, video deemed 73	
	Marked	
	6 MATCHFTC 751483 89	
	7 MATCHFTC 751484 89	
	8 MATCHFTC 672309, video deemed 102	
	Marked	
	9 MATCHFTC 846944, Excel 121	
	Spreadsheet deemed marked	
	(Index continued)	

5	7
<div>1 (Index continued) 2 EXHIBIT DESCRIPTION PAGE 3 10 MATCHFTC 846945, Excel 4 Spreadsheet deemed marked 138 5 11 MATCHFTC 774726, Excel 6 Spreadsheet deemed marked 149 7 12 MATCHFTC 846511, Excel 8 Spreadsheet deemed marked 173 9 13 MATCHFTC 846469, Excel 10 Spreadsheet deemed marked 181 11 14 MATCHFTC 846519, Excel 12 Spreadsheet deemed marked 187 13 15 MATCHFTC 846839, Excel 14 Spreadsheet deemed marked 192 15 16 MATCHFTC 846838, Excel 16 Spreadsheet deemed marked 194 17 17 Defendant Match Group, LLC's 18 Second Amended Responses and 19 Objections to Plaintiff 20 Federal Trade Commission's 21 First Set of Interrogatories 213 22 18 MATCHFTC 672345 218 23 19 MATCHFTC 846847 221 24 25 (Index continued)</div>	<div>1 IT IS HEREBY STIPULATED AND AGREED, by 2 and between counsel for the respective 3 parties hereto, that the filing, sealing and 4 certification of the within deposition shall 5 be and the same are hereby waived; 6 IT IS FURTHER STIPULATED AND AGREED that 7 all objections, except as to the form of the 8 question, shall be reserved to the time of the 9 trial; 10 IT IS FURTHER STIPULATED AND AGREED that 11 the within deposition may be signed before any 12 Notary Public with the same force and effect 13 as if signed and sworn to before the Court. 14 15 16 17 18 19 20 21 22 23 24 25</div>
6	8
<div>1 (Index continued) 2 EXHIBIT DESCRIPTION PAGE 3 20 MATCHFTC 846848, PDF deemed 4 Marked 230 5 21 MATCHFTC 846849 233 6 22 F01-MG-0052426, PDF deemed 7 Marked 256 8 23 MATCHFTC 700480 262 9 24 MATCHFTC 700484 262 10 25 MATCHFTC 774724, Excel 11 Spreadsheet deemed marked 273 12 26 Apple cancellation Match app 296 13 27 MATCHFTC 753000 313 14 28 MATCHFTC 753001 313 15 29 MATCHFTC 782034, video deemed 16 Marked 335 17 18 19 20 21 22 23 24 25</div>	<div>1 D U S H Y A N T S A R A P H, called 2 as a witness, having been duly sworn by 3 a Notary Public, was examined and 4 testified as follows: 5 EXAMINATION BY 6 MR. TEPFER: 7 Q. We are on the record. 8 Good morning, Mr. Saraph, my 9 name is Reid Tepfer. 10 A. Good morning. 11 Q. This is Hasan Aijaz, as you know 12 we represent the FTC in this litigation 13 against Match Group, Inc and Match 14 Group, LLC which currently is pending 15 in the Northern District of Texas. 16 I'll give everyone a chance in the room 17 to introduce themselves. 18 MR. MUNDEL: Benjamin Mundel 19 from Sidley Austin and I'm with 20 Sam Kitchens, Jeanette Teckman 21 and Chelsea Priest. 22 MR. TEPFER: Thanks so much. 23 Q. And would you mind stating your 24 name for the record. 25 A. Dushyant Saraph.</div>

<p>89</p> <p>1 So again MATCHFTC 751483 is</p> <p>2 going to be Exhibit 6, and ending</p> <p>3 Bates 1484 is going to be Exhibit</p> <p>4 7.</p> <p>5 (Exhibit 6, MATCHFTC 751483,</p> <p>6 marked for identification, as of</p> <p>7 this date.)</p> <p>8 (Exhibit 7, MATCHFTC 751484,</p> <p>9 marked for identification, as of</p> <p>10 this date.)</p> <p>11 BY MR. TEPFER:</p> <p>12 Q. Take a look at Exhibit 6 first,</p> <p>13 let me know after you had a chance to</p> <p>14 look at it.</p> <p>15 A. I looked at it.</p> <p>16 Q. Do you know what this exhibit</p> <p>17 is?</p> <p>18 A. Is it an e-mail.</p> <p>19 Q. An e-mail to you; is that right?</p> <p>20 A. An e-mail from me to someone.</p> <p>21 Q. It appears that Shamika Naik</p> <p>22 says, "Here you go to you." Is that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 THE COURT REPORTER: Please</p>	<p>91</p> <p>1 taking a look and just letting me know</p> <p>2 if you remember it.</p> <p>3 A. Yes, this looks like the resig-</p> <p>4 nation flow one desktop.</p> <p>5 Q. I'll draw your attention to</p> <p>6 slide five of the PowerPoint.</p> <p>7 A. That's page five?</p> <p>8 Q. Yes, sir, sorry.</p> <p>9 A. Yes, I'm there.</p> <p>10 Q. Here this is the survey page of</p> <p>11 the cancellation.</p> <p>12 Is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And cancellation flow, it</p> <p>15 appears the user in this capture has</p> <p>16 selected the option "very few profiles</p> <p>17 pique my interest," correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it appears there is a second</p> <p>20 follow up question that is displaying</p> <p>21 as a result of that selection; is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. The follow up question is, "How</p> <p>25 could we have helped?"</p>
<p>90</p> <p>1 spell that.</p> <p>2 MR. TEPFER: S-H-A-M-I-K-A</p> <p>3 N-A-I-K sent you this e-mail.</p> <p>4 THE COURT REPORTER: Thank</p> <p>5 you.</p> <p>6 BY MR. TEPFER:</p> <p>7 Q. This e-mail is from February</p> <p>8 9th, 2018, correct?</p> <p>9 A. Correct.</p> <p>10 Q. It appears to include a Power-</p> <p>11 Point with some screenshots of the</p> <p>12 resignation flow; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. I'll represent that Exhibit 7</p> <p>15 here is the attached PowerPoint the</p> <p>16 company produced to us. Do you</p> <p>17 remember receiving the e-mail in</p> <p>18 Exhibit 6?</p> <p>19 A. I don't recall 2018, long time</p> <p>20 ago.</p> <p>21 Q. Do you remember this PowerPoint</p> <p>22 here, Exhibit 7?</p> <p>23 A. I can go through it now but I</p> <p>24 don't recall it from that time.</p> <p>25 Q. No worries, if you wouldn't mind</p>	<p>92</p> <p>1 A. Yes, it says, "We are sorry to</p> <p>2 hear that, how can we have helped?"</p> <p>3 Q. If you go to page seven of this</p> <p>4 PowerPoint, it appears that if you</p> <p>5 selected on the survey page the option,</p> <p>6 "I didn't receive enough replies to</p> <p>7 e-mails I sent out," you would be</p> <p>8 presented with a follow up question,</p> <p>9 "We are sorry to hear that, how many</p> <p>10 people did you e-mail."</p> <p>11 Is that right?</p> <p>12 A. Yes.</p> <p>13 Q. So skipping forward to page nine</p> <p>14 in the PowerPoint, it looks like if you</p> <p>15 click "I met someone," you're asked,</p> <p>16 "Where did you two meet;" is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Is there also a version that</p> <p>20 asks for the membership ID of the</p> <p>21 person that you met if you state that</p> <p>22 you met the person on Match.com?</p> <p>23 A. I'm aware of a version that has</p> <p>24 that, again it says optional in</p> <p>25 brackets.</p>

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1 Q. So for the survey page you
2 don't, if I'm understanding you
3 correctly, you don't have to answer the
4 question, you can click continue
5 cancel; is that right?

6 A. Correct, the whole question is
7 optional.

8 Q. Has that always been the case
9 you can click continue cancel since
10 2014?

11 A. That's always been the case as
12 far as I'm aware.

13 Q. Does the website inform
14 customers anywhere that they can click
15 continue cancellation without answering
16 a survey question?

17 A. That's pretty normal behavior
18 where the error is presented to a user
19 if they were not able to do something.

20 THE COURT REPORTER: Did you
21 say error or arrow?

22 THE WITNESS: Error.

23 THE COURT REPORTER: Please
24 continue.

25 A. For example, if the user was to

94

1 click cancellation and continue, we are
2 not able to do that without answering
3 the question, they would have seen an
4 error at the top. So generally in UX
5 design you assume the user always wants
6 to move forward and would be able to do
7 that here.

8 Q. So to be clear, there is no
9 explicit language that states that,
10 correct?

11 A. Correct, as I mentioned because
12 of the UX behaviors we believe that
13 consumers use product by.

14 Q. So the user would determine that
15 through trial and error, correct?

16 A. Trial and error just using any
17 other consumer technology product they
18 have used.

19 Q. And so why does Match.com
20 include the survey screen in the
21 cancellation flow?

22 A. There are significant sorts of
23 data we get from the user answering the
24 survey for how we can make our product
25 better. This data is tracked and we do

95

1 have our product team look to see how
2 the experience can be made better.

3 Q. Why did Match.com decide to put
4 the survey question at this spot in the
5 cancellation flow?

6 A. The users obviously expressed
7 their interest to cancel their
8 subscription, so we would like to know
9 why they were perhaps unhappy or maybe
10 happy with their experience on Match.
11 So it seems intuitive to ask this as
12 part of the experience. We also get
13 the highest number of answers as part
14 of this experience so we have the most
15 data to inform how we drive our product
16 direction forward.

17 Q. So if I am understanding you
18 correctly, you're stating at this point
19 the user has expressed the intent to
20 cancel.

21 Is that correct?

22 MR. MUNDEL: Objection
23 scope, form, misstates the
24 testimony.

25 Q. Sorry, I guess to rephrase, am I

96

1 understanding you correctly that the
2 reason the survey page is placed here
3 is because Match.com understands the
4 user has expressed an intent to cancel?

5 MR. MUNDEL: Same objec-
6 tions.

7 A. Yes, yes.

8 I mean, the user is going
9 through the resignation flow and has
10 expressed an interest to resign their
11 Match.com subscription. And so, this
12 is a point in time where we can
13 understand why they are trying to do
14 that.

15 Q. But at this point, at this point
16 in the flow the cancellation is yet not
17 effective.

18 Is that right?

19 A. I think so.

20 The intent the user has given,
21 they clicked on cancel subscription is
22 to go through and cancel their
23 subscription so they are in that flow
24 basically from a mind state perspec-
25 tive.

<div>97</div> <div>1 Q. Is there a reason the survey 2 isn't placed after the cancellation 3 confirmation is received? 4 A. There is a couple reasons. One 5 is there are answers here that could 6 lead to us, for example, offering the 7 user a cheaper subscription. If you 8 were to say I can't afford a subscrip- 9 tion we would say hey, can we offer you 10 something that's a cheaper price point 11 so you can continue your subscription. 12 Obviously if you cancel that we 13 wouldn't have that information to be 14 able to do that. We also know that 15 once people cancel they are not going 16 to answer this question, this becomes 17 an afterthought. So again given how 18 important it is in informing our 19 overall product strategy why people not 20 be happy with our experience, we would 21 like to get as many people to answer as 22 possible. 23 The last thing I'll say is the 24 whole thing is optional. If you really 25 didn't want do to this you can click</div>	<div>99</div> <div>1 THE COURT REPORTER: Thank 2 you. 3 BY MR. TEPFER: 4 Q. So you mentioned that the survey 5 is optional, correct? 6 A. Yes. 7 Q. Does the fact that not all users 8 complete the survey effect the quality 9 of the data that Match.com receives 10 from the survey? 11 A. We just need a large enough 12 sample size completion to be able to 13 gain insights from the data in terms of 14 how we can make our product better. 15 Q. So self selection doesn't effect 16 the quality of the data that Match.com 17 receives from the survey? 18 A. It should not. 19 Q. You mentioned that if it was 20 placed after the cancellation was 21 effective, less users would complete 22 the survey. 23 Is that right? 24 A. Yes, that's our belief. 25 Q. Why do you believe that's the</div>
<div>98</div> <div>1 continue cancellation and continue on. 2 Q. Did Match.com ever consider 3 moving the survey page until after the 4 cancellation was effective? 5 A. Not that I'm aware of. 6 Q. Are you familiar with a Match. 7 Com employee named Chris Auderer? 8 A. Yes, in my preparation I was 9 made aware. 10 Q. Did you review any proposals by 11 Chris Auderer concerning online 12 cancellation flow in your preparation 13 for your testimony? 14 A. Yes, I did. 15 Q. So Ms. Auderer proposed to the 16 company they move the survey question 17 until after the cancellation was 18 complete. 19 Is that correct? 20 A. I can't remember the specifics 21 of the recommendation that Ms. Auderer 22 made. 23 THE COURT REPORTER: How do 24 you spell Auderer? 25 MR. MUNDEL: A-U-D-E-R-E-R.</div>	<div>100</div> <div>1 case? 2 A. Once the user has cancelled 3 their subscription they'll probably 4 exit the browser and not really pay 5 attention to our survey. And given how 6 critical the survey is informing our 7 product direction, how we can make 8 product better, we would like more 9 people to answer it obviously. 10 Q. Has Match.com ever conducted an 11 AB test to determine what the effect on 12 cancellation rates is by including the 13 survey page? 14 A. Not that I'm aware of. 15 Again it is an optional page, 16 there's not a lot of friction from my 17 perspective. A user can move through 18 this very easily, that's not the only 19 reason we have it in that spot. I 20 mentioned earlier because some answers 21 to the questions could lead you to 22 receiving an offer, for example. 23 Q. You use the word friction, how 24 are you defining, what do you mean by 25 that?</div>

<div>101</div> <div>1 A. A user getting stuck on the 2 page, for example. Our belief this is 3 a very simple flow, you see the survey, 4 you can move past it if you don't want 5 to answer it, you can hit continue 6 cancellation which is clearly stated on 7 the page, or you can answer and move 8 forward, you have the optionality. 9 Q. What are some of the things that 10 add friction, I suppose? 11 MR. MUNDEL: Objection 12 scope, form. 13 A. A pretty vague question, depends 14 on the situation what we are talking 15 about. 16 Q. Has Match.com ever determined 17 whether any aspect of the online 18 cancellation flow added friction? 19 A. My understanding is that there 20 is not much friction in this flow given 21 that when a user starts canceling and 22 ends their cancellation, north of 90 23 percent of users are able to success- 24 fully do that. We also don't see a lot 25 of complaints from their users that</div>	<div>103</div> <div>1 I'll go back, I want to ask about at 2 22 seconds or 21 seconds rather, the 3 save offer page here. In this version 4 of the flow the user skips the survey 5 page and they are presented with this 6 save offer. 7 Is that right? 8 A. Can you go back to see what they 9 did on the prior page to this? 10 Q. Yes, going back to we are now at 11 16 seconds. 12 A. Okay. 13 Q. And playing, pausing again at 14 21. 15 A. Okay. 16 (Video played) 17 Q. So my question again if the user 18 skips the survey page they are 19 presented with this save offer; is that 20 right? 21 A. In this flow, yes. 22 Q. They are getting here 50 percent 23 off six months; is that right? 24 A. Yes. 25 Q. There is another version that</div>
<div>102</div> <div>1 they are not able to do that. 2 Q. Some users in the cancellation 3 flow you mentioned receive a retention 4 offer? 5 A. Yes. 6 Q. Also known as a save offer, 7 right? 8 A. Yes. 9 Q. And between 2014 and the present 10 were there versions of the online 11 cancellation flow that didn't include a 12 save offer? 13 A. Not that I'm aware of. 14 Q. I'm going to play MATCHFTC 15 672309. 16 MR. TEPFER: If we can mark 17 this as Exhibit 8. 18 (Exhibit 8, MATCHFTC 672309, 19 video deemed marked, marked for 20 identification, as of this date.) 21 BY MR. TEPFER: 22 Q. This is starting with somebody 23 named Amber. 24 (Video played) 25 Q. We have seen the whole thing,</div>	<div>104</div> <div>1 has three months for the price of one; 2 is that right? 3 A. That's possible. There is 4 multiple different save offers as part 5 of the program. 6 Q. So in terms of visuals they are 7 all substantially the same. 8 Is that right? 9 A. That's correct. 10 Q. Going back now to that resig- 11 nation flow PowerPoint that was 12 exhibit, going back to MATCHFTC 751484, 13 that's Exhibit 7, if we can look at 14 page 16, please. 15 MR. MUNDEL: We don't have 16 the Bates numbers on 7, we will 17 trust and hope that you got it 18 right. 19 MR. TEPFER: Sorry. 20 BY MR. TEPFER: 21 Q. Let's see, looking at this page 22 16 on Exhibit 7, it says, "Save offers 23 governed by attached rules up at the 24 top." 25 Do you see that language?</div>

<p>105</p> <p>1 A. Yes.</p> <p>2 Q. This one here offers three</p> <p>3 months for the price of one as the save</p> <p>4 offer; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Then there is on the right some</p> <p>7 annotation about the save offer rules;</p> <p>8 is that right?</p> <p>9 A. Yes.</p> <p>10 Q. It states, "These are the save</p> <p>11 offer rules as of January 2011."</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if these save offer</p> <p>14 rules were accurate at the time this</p> <p>15 PowerPoint was sent in February 2018?</p> <p>16 MR. MUNDEL: I object, for</p> <p>17 clarity are you saying is it</p> <p>18 accurate as of 2018 or is it</p> <p>19 accurate as of January 2011?</p> <p>20 Q. 2018 because when these was sent</p> <p>21 to you in 2018, it references 2011. I</p> <p>22 just want to know if these are still</p> <p>23 the save offer rules that were in place</p> <p>24 at that time?</p> <p>25 MR. MUNDEL: Objection,</p>	<p>107</p> <p>1 Q. And then after the save offer</p> <p>2 page is, to play the video here, we are</p> <p>3 presented with this page, start at the</p> <p>4 top it says Tell us more, it asks how</p> <p>5 likely someone is to recommend Match.</p> <p>6 Com to a friend.</p> <p>7 Do you have a name for this</p> <p>8 page?</p> <p>9 A. We can just call it the NPS</p> <p>10 page.</p> <p>11 (Video played)</p> <p>12 Q. And I know the acronym NPS, I</p> <p>13 forget what's it for again?</p> <p>14 A. Net Promoter Score.</p> <p>15 Q. All right.</p> <p>16 If we can call this the NPS</p> <p>17 page. Are you aware of any version of</p> <p>18 the online cancellation flow that</p> <p>19 doesn't have the save offer page in</p> <p>20 between the survey page and the NPS</p> <p>21 page?</p> <p>22 A. Not that I'm aware of in the</p> <p>23 instance save offer is being presented.</p> <p>24 Q. Let's see, sorry, to make sure</p> <p>25 I'm clear, what are the instances in</p>
<p>106</p> <p>1 beyond the scope.</p> <p>2 A. I'm not aware.</p> <p>3 Q. Are you familiar with the save</p> <p>4 offer rules for this page?</p> <p>5 MR. MUNDEL: Objection to</p> <p>6 form and scope.</p> <p>7 A. I'm not aware of the specific</p> <p>8 rules.</p> <p>9 Q. Do you know what the save offer</p> <p>10 rules are currently right now?</p> <p>11 MR. MUNDEL: Same objection,</p> <p>12 beyond the scope.</p> <p>13 A. Not aware.</p> <p>14 Q. Do you know if they have changed</p> <p>15 over time?</p> <p>16 A. I'm not aware that they have</p> <p>17 changed.</p> <p>18 Q. So the save offer page does it</p> <p>19 always come, if a user presented the</p> <p>20 save offer page, does it always come</p> <p>21 after a save offer page in the cancel-</p> <p>22 lation flow?</p> <p>23 A. Not aware, but in the two</p> <p>24 examples that I have seen it always</p> <p>25 comes right after that page, yes.</p>	<p>108</p> <p>1 which user is not presented a save</p> <p>2 offer, do you recall?</p> <p>3 A. I don't know the specific rules</p> <p>4 but its not that every user is given a</p> <p>5 save offer.</p> <p>6 Q. Are most users presented a save</p> <p>7 offer?</p> <p>8 A. Not aware.</p> <p>9 Q. Do you know if most responses to</p> <p>10 the survey result in a save offer being</p> <p>11 displayed?</p> <p>12 A. Not aware.</p> <p>13 Q. If we can go back now to</p> <p>14 MATCHFTC 774671, again I believe this</p> <p>15 is Exhibit 1. We are back on Exhibit</p> <p>16 1, I'll take us to the NPS page. This</p> <p>17 is second 44 in the video here. The</p> <p>18 user is given the option of rating how</p> <p>19 likely it is they recommend Match.com</p> <p>20 to a friend with a score of 0 to 10; is</p> <p>21 that right?</p> <p>22 A. Yes.</p> <p>23 Q. The user does not have to</p> <p>24 actually answer this to progress</p> <p>25 through the flow.</p>

<p>109</p> <p>1 Is that right?</p> <p>2 A. It is optional.</p> <p>3 Q. And has that always been the</p> <p>4 case?</p> <p>5 A. As far as I'm aware, yes.</p> <p>6 Q. Same question, is there a reason</p> <p>7 this was presented to the user before</p> <p>8 the cancellation is confirmed?</p> <p>9 A. Can you repeat the question?</p> <p>10 Q. Sorry, is there a reason that</p> <p>11 this NPS page comes before the</p> <p>12 cancellation confirmation?</p> <p>13 A. Yes, the reason it comes before</p> <p>14 is so we can get data on whether the</p> <p>15 user is likely to recommend Match to a</p> <p>16 friend, so how happy were they with</p> <p>17 their product experience. It also</p> <p>18 lists the benefits that the user would</p> <p>19 be losing as a result of cancellation</p> <p>20 so they are aware these benefits would</p> <p>21 no longer be available to them. And</p> <p>22 once a user is made aware of those they</p> <p>23 can continue the cancellation and get</p> <p>24 the confirmation page.</p> <p>25 Q. So given, you mentioned the</p>	<p>111</p> <p>1 friction, you're stating?</p> <p>2 MR. MUNDEL: Would you say</p> <p>3 the question again.</p> <p>4 MR. TEPFER: Sure.</p> <p>5 BY MR. TEPFER:</p> <p>6 Q. Would it add friction to make</p> <p>7 the survey page nonoptional?</p> <p>8 MR. MUNDEL: Objection form,</p> <p>9 scope.</p> <p>10 A. If the user has to answer the</p> <p>11 survey page, I would think yes, that's</p> <p>12 not the best UX practice when they are</p> <p>13 trying to get through a cancellation</p> <p>14 flow. I think it is better it is</p> <p>15 optional to be able to continue on.</p> <p>16 Q. Why is that not best UX</p> <p>17 practice?</p> <p>18 A. The user wants to continue</p> <p>19 through and cancel their subscription,</p> <p>20 and we are asking them to do something</p> <p>21 that maybe they don't want to do.</p> <p>22 Q. And does requiring the entry</p> <p>23 password add friction to the cancel-</p> <p>24 lation process?</p> <p>25 A. The requirement to have a</p>
<p>110</p> <p>1 importance of the survey and the</p> <p>2 information received from the survey</p> <p>3 page.</p> <p>4 Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And given the importance of that</p> <p>7 survey, why does Match.com make it</p> <p>8 optional?</p> <p>9 A. The survey page why is it</p> <p>10 optional?</p> <p>11 Q. Yes.</p> <p>12 A. Because we don't want to add</p> <p>13 friction in the cancellation flow. So</p> <p>14 if a user doesn't want to answer the</p> <p>15 survey and just cancel their subscrip-</p> <p>16 tion, we want to make sure they are</p> <p>17 able to do that in a very simple flow</p> <p>18 with three pages, and you have</p> <p>19 cancelled.</p> <p>20 And of course we want the</p> <p>21 information but the user might not want</p> <p>22 to give it to us and just wants to</p> <p>23 continue, we want to make sure they</p> <p>24 were able to do that.</p> <p>25 Q. Would making a survey page add</p>	<p>112</p> <p>1 password is part of security features</p> <p>2 as we have discussed prior. So I think</p> <p>3 its serves a purpose in terms of making</p> <p>4 sure that the user's account is</p> <p>5 protected.</p> <p>6 Q. Sure, I understand Match.com is,</p> <p>7 MGLLC taking the position it adds, has</p> <p>8 a purpose?</p> <p>9 A. Yes.</p> <p>10 Q. But what I'm asking is a little</p> <p>11 different, does it add friction to the</p> <p>12 cancellation process?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Continuing we are on ending</p> <p>15 Bates 671 again, and this is Exhibit 1,</p> <p>16 I am going to hit play here at second</p> <p>17 44.</p> <p>18 (Video played)</p> <p>19 Q. So stopping here at second 51,</p> <p>20 the user at this point, this screen is</p> <p>21 the cancellation confirmation page?</p> <p>22 A. Yes.</p> <p>23 Q. Only once the user views this</p> <p>24 page is the cancellation effective; is</p> <p>25 that right?</p>

<p>113</p> <p>1 A. Yes.</p> <p>2 Q. So we talked about whether there</p> <p>3 were any other versions of flow up to</p> <p>4 the subscription status or cancellation</p> <p>5 option page, right; do you remember</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. And I want to ask sort of the</p> <p>9 same question about from that page</p> <p>10 going forward whether there are any</p> <p>11 versions of the online cancellation</p> <p>12 flow that we haven't discussed here</p> <p>13 today beginning from September 2014 to</p> <p>14 the present of which you're aware?</p> <p>15 MR. MUNDEL: Objection to</p> <p>16 form.</p> <p>17 A. As far as I'm aware there have</p> <p>18 not been material changes to the flow</p> <p>19 from the cancellation page to the</p> <p>20 confirmation page other than increasing</p> <p>21 clarity and copy to say continue</p> <p>22 cancellation, that was not always the</p> <p>23 case, for example.</p> <p>24 Q. So if you said there was a</p> <p>25 change to add at the bottom the button</p>	<p>115</p> <p>1 the users that cancel come back to our</p> <p>2 product later, so we want them to have</p> <p>3 a positive experience throughout the</p> <p>4 process.</p> <p>5 Q. Do you recall what the copy was</p> <p>6 for that button before the change was</p> <p>7 made?</p> <p>8 A. I don't recall exactly.</p> <p>9 Q. Do you recall approximately when</p> <p>10 that copy was added to the button?</p> <p>11 A. I don't recall.</p> <p>12 Q. Was it in the past five years?</p> <p>13 A. I would rather not speculate.</p> <p>14 Q. In terms of discussing the</p> <p>15 cancellation flow between 2014 and</p> <p>16 present, has there ever been different</p> <p>17 copy on the survey page that you are</p> <p>18 aware of?</p> <p>19 A. I'm not aware.</p> <p>20 Q. Has there ever been any</p> <p>21 different versions of the NPS page of</p> <p>22 which you're aware?</p> <p>23 A. I'm not aware.</p> <p>24 Q. And looking at, we are here at</p> <p>25 second 38 in the video, there was a</p>
<p>114</p> <p>1 that says continue cancellation; is</p> <p>2 that right?</p> <p>3 A. That's not what I said.</p> <p>4 Q. Sorry.</p> <p>5 A. The button always existed, the</p> <p>6 copy on the button was updated to say</p> <p>7 continue cancellation to give the</p> <p>8 utmost clarity to our users.</p> <p>9 Q. So just to make sure we are</p> <p>10 talking about the same thing, I am</p> <p>11 going to go here to and we are back in</p> <p>12 Exhibit 1, we are looking at second 33</p> <p>13 in the video. We are here on the</p> <p>14 survey page, right?</p> <p>15 A. Correct.</p> <p>16 Q. So the copy you're referencing</p> <p>17 on the second blue button says continue</p> <p>18 cancellation at the bottom.</p> <p>19 A. Correct, I can't recall if its</p> <p>20 for this page that was made or a</p> <p>21 different page, but that language was</p> <p>22 updated. It is from the perspective</p> <p>23 that we want this process to be easy</p> <p>24 for users and clear to our users.</p> <p>25 The other thing I'll add is half</p>	<p>116</p> <p>1 period of time in which the buttons at</p> <p>2 the bottom, one was a link, one was a</p> <p>3 blue button.</p> <p>4 Is that the case?</p> <p>5 A. Yes, I believe instead of</p> <p>6 continue cancellation it was a link at</p> <p>7 the time, this change was made to</p> <p>8 continue cancellation.</p> <p>9 Q. And do you recall when that</p> <p>10 change took place?</p> <p>11 A. I don't recall when that change</p> <p>12 took place. It was done again with</p> <p>13 this consistent clarity from each page</p> <p>14 to the next that so we can keep the</p> <p>15 continued cancellation language.</p> <p>16 Q. So did Match ever consider</p> <p>17 implementing any changes to shorten the</p> <p>18 length of the online cancellation flow</p> <p>19 at any time between September 2014 and</p> <p>20 the present?</p> <p>21 MR. MUNDEL: One second.</p> <p>22 MR. TEPFER: Sure.</p> <p>23 MR. MUNDEL: No objection.</p> <p>24 A. Not that I'm aware of.</p> <p>25 BY MR. TEPFER:</p>

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1 CERTIFICATE

2

3 STATE OF _____:

4 COUNTY/CITY OF _____:

5

6 Before me, this day, personally appeared

7 DUSHYANT SARAPH, who, being duly sworn, states

8 that the foregoing transcript of his

9 Deposition, taken in the matter, on the date,

10 and at the time and place set out on the title

11 page hereof, constitutes a true and accurate

12 transcript of said deposition.

13

14 _____

15 DUSHYANT SARAPH

16

17 SUBSCRIBED and SWORN to before me this

18 _____ day of _____, 2023, in the

19 jurisdiction aforesaid.

20

21

22

23 _____

24 My Commission Expires _____ Notary Public

25

358

1 CERTIFICATE

2 STATE OF NEW YORK)

3 : ss.

4 COUNTY OF NEW YORK)

5

6 I, Jeremy Frank, a Notary Public within

7 and for the State of New York, do hereby

8 certify:

9 That DUSHYANT SARAPH, the witness whose

10 deposition is hereinbefore set forth, was duly

11 sworn by me and that such deposition is a true

12 record of the testimony given by the witness.

13 I further certify that I am not related

14 to any of the parties to this action by blood

15 or marriage, and that I am in no way

16 interested in the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereby

18 set my hand on the 27th day of June, 2023.

19

20 s/Jeremy Frank

21 JEREMY FRANK, MPM

22

23

24

25

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1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over

4 carefully and make any necessary corrections.

5 You should state the reason in the appropriate

6 space on the errata sheet for any corrections

7 that are made.

8 After doing so, please sign the errata

9 sheet and date it.

10 You are signing same subject to the

11 changes you have noted on the errata sheet,

12 which will be attached to your deposition. It

13 is imperative that you return the original

14 errata sheet to the deposing attorney within

15 thirty (30) days of receipt of the deposition

16 transcript by you. If you fail to do so, the

17 deposition transcript may be deemed to be

18 accurate and may be used in court.

19

20

21

22

23

24

25

360

1 *** ERRATA SHEET ***

2

3 NAME OF CASE: FTC VS. MATCH

4 DATE OF DEPOSITION: June 22, 2023

5 NAME OF WITNESS: SARAPH

6 PAGE LINE FROM TO

7

8

9

10

11

12

13

14

15

16

17

18 _____

19 DUSHYANT SARAPH

20 Subscribed and sworn to before me

21 this ____ day of _____, 2023.

22

23 _____

24 JEREMY FRANK My Commission Expires:

25

EXHIBIT 9

Redacted in its Entirety

(Filed Under Seal Pursuant to Protective
Order Regarding Confidential Materials)

EXHIBIT 10

CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS
DALLAS DIVISION

---oOo---

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

No. 3:19-cv-02281-K

MATCH GROUP, INC., a
corporation, MATH GROUP, LLC,
formerly MATCH.COM, LLC, a
Limited Liability Company,

Defendants.

_____/

DEPOSITION OF
JENNIFER KING, PH.D.

CONFIDENTIAL

THURSDAY, JULY 27, 2023

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
JOB NUMBER 6028094

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1 --o0o--
2 Videotaped deposition of JENNIFER KING, PH.D.,
3 taken by the Defendant, at SIDLEY AUSTIN LLP, 555
4 California Street, San Francisco California 94104,
5 commencing at 9:02 A.M., on THURSDAY, JULY 27, 2023,
6 before me, HOLLY THUMAN, CSR, RMR, CRR.
7 --o0o--
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26 ALSO PRESENT:
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28 SAMUEL KITCHENS, Match.com (Remote)
29 BRANDON WARD, Precocity (Remote)

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5	MR. AIJAZ	228	
6	--o0o--		
7	EXHIBITS MARKED FOR IDENTIFICATION		
8	NO.	DESCRIPTION	PAGE
9	Exhibit 1	Expert Report of Dr. Jennifer King	5
10	Exhibit 2	Rebuttal Report of Dr. Jennifer King	5
11	Exhibit 3	Neilsen Norman Group document, "How to Conduct a Heuristic Evaluation"	34
12	Exhibit 4	Nielsen Norman Group Heuristic Evaluation Workbook	44
13	Exhibit 5	2016 Flow Figures - King Report	95
14	Exhibit 6	2019 Flow Figures - King Report	95
15	Exhibit 7	2022 Flow Figures - King Report	95
16	Exhibit 8	Expert Report of Brandon Ward Regarding Match.com's Online Subscription Cancellation Flow, January 13, 2023	112
17	Exhibit 9	Screenshot headed on the first page at the top "Dating"	184
18	Exhibit 10	Screenshot headed at top of first page "Suggested"	195
19	(Cont'd)		

1 (Exhibits, cont'd)

2 Exhibit 11 Printout of web page from 214
public.govdelivery.com

3

4 --o0o--

5 INSTRUCTIONS TO WITNESS/REQUESTS TO MARK TRANSCRIPT

6 PAGE LINE

7 Instruction not to answer 42 12

8 Instruction not to answer 66 21

9 --o0o--

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Page 4

1 THURSDAY, JULY 27, 2023
2 9:02 A.M.
3 --oOo--
4 JENNIFER KING, PH.D.,
5 _____
6 called as a witness, having been first duly
7 sworn, was examined and testified as follows:
8 ---oOo---
9 EXAMINATION BY MR. HUMMEL
10 (Deposition Exhibits 1 and 2 were marked for
11 identification.)
12 BY MR. HUMMEL:
13 Q. Good morning.
14 A. Good morning.
15 Q. My name is Chad Hummel. I represent Match,
16 the defendants in this case.
17 You understand you're under oath?
18 A. I do.
19 Q. And you are providing expert testimony in this
20 case?
21 A. I am.
22 Q. And you're being paid by the Federal Trade
23 Commission for that testimony. Correct?
24 A. I am.
25 Q. Okay. And you formed some opinions, have you,

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<p>1 workbooks.</p> <p>2 Q. How were they guided, if you know, in what to</p> <p>3 look for in a heuristic analysis?</p> <p>4 A. Well, I mean, we were all familiar with</p> <p>5 Nielsen's Ten Heuristics. That's why I work with them.</p> <p>6 Q. And by "Nielsen's Ten Heuristics," can you</p> <p>7 define what you mean?</p> <p>8 A. Jakob Nielsen's 10 Usability Heuristics. I</p> <p>9 don't have them memorized, but I'll be happy to read</p> <p>10 them off if you have a copy of that article.</p> <p>11 Q. I do, and we'll talk about that later.</p> <p>12 Do you know what the Nielsen Norman Group is?</p> <p>13 A. I sure do.</p> <p>14 Q. So what is it?</p> <p>15 A. So it's a consulting firm that was founded by</p> <p>16 Jakob Nielsen and Professor Donald Norman. I'm not</p> <p>17 sure when; mid- or late '90s.</p> <p>18 But Nielsen was a usability expert and</p> <p>19 researcher, I believe, at Sun Microsystems.</p> <p>20 Donald Norman's been a professor of cognitive</p> <p>21 psych at UC San Diego, I think, for decades.</p> <p>22 And so they formed a research and consulting</p> <p>23 group during the first dot-com boom.</p> <p>24 Q. Do you consider the Nielsen Norman Group to</p> <p>25 have authoritative expertise in the field of usability?</p> <p style="text-align: right;">Page 10</p>	<p>1 you were asking; heuristic analysis and --</p> <p>2 Q. How much time you actually spent looking at</p> <p>3 the website versus how much time you spent doing the</p> <p>4 heuristic analysis versus the writing.</p> <p>5 A. I mean, that's hard to say because you go back</p> <p>6 and look at the website continuously as you're writing.</p> <p>7 But, you know, as an independent task, looking</p> <p>8 at the website, I'm going to guess in the magnitude of</p> <p>9 5 to 10 hours.</p> <p>10 Q. Do you agree that the purpose of heuristic</p> <p>11 analysis or a heuristic evaluation is to find usability</p> <p>12 problems on an interface?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And do you agree that a heuristic</p> <p>15 evaluation is difficult for a single individual to do</p> <p>16 because one person will never be able to find all the</p> <p>17 usability problems on an interface?</p> <p>18 A. I disagree that it's difficult to do. I think</p> <p>19 you have to understand Nielsen's framing of what a</p> <p>20 heuristic analysis is supposed to accomplish.</p> <p>21 So it -- if I may, Nielsen developed this --</p> <p>22 this method in order to give practitioners a way to</p> <p>23 provide a -- a concise analysis without the need or</p> <p>24 requirement to engage in user testing in order to spot</p> <p>25 a handful of particular canonical usability issues.</p> <p style="text-align: right;">Page 12</p>
<p>1 A. I do.</p> <p>2 Q. Can you tell me how much time each of the</p> <p>3 individuals who worked on your heuristic analysis with</p> <p>4 you spent analyzing Match.com cancellation web flows?</p> <p>5 A. I would have to look at my record. I don't</p> <p>6 remember off the top of my head. Not as much as me,</p> <p>7 but --</p> <p>8 Q. And how much did you spend doing your</p> <p>9 heuristic analysis?</p> <p>10 A. I would have to go back to my records. I</p> <p>11 don't have a clear division of that piece versus the</p> <p>12 writing piece versus, you know, everything else.</p> <p>13 Q. So, as you sit here today, you can't discern</p> <p>14 between the amount of time you spent doing the analysis</p> <p>15 versus the analysis -- excuse me, the heuristic study</p> <p>16 versus the analysis versus the writing?</p> <p>17 MR. AIJAZ: Objection. Misstates testimony.</p> <p>18 THE WITNESS: I mean, I can estimate for you.</p> <p>19 BY MR. HUMMEL:</p> <p>20 Q. Please.</p> <p>21 A. Okay. So I probably spent in the order of</p> <p>22 5 to 10 hours working through the heuristic analysis.</p> <p>23 I'm trying to remember how much time I spent writing.</p> <p>24 There was a lot of writing.</p> <p>25 And, I'm sorry, what was the other piece of it</p> <p style="text-align: right;">Page 11</p>	<p>1 So it comes out of a tradition I would argue</p> <p>2 he started called "discount usability." This was back</p> <p>3 in the early '90s, mid-1990s, and he was essentially</p> <p>4 trying to develop this method in order to, I would say,</p> <p>5 democratize, essentially, this practice to make it more</p> <p>6 widespread.</p> <p>7 So it is a way of identifying errors without</p> <p>8 having to engage in user testing.</p> <p>9 That said, it does not necessarily uncover all</p> <p>10 errors, and user testing can also find different</p> <p>11 errors.</p> <p>12 Q. You did not do a usability study. Correct?</p> <p>13 A. I did not do a usability study.</p> <p>14 Q. Is it true, as Jakob Nielsen wrote in</p> <p>15 November 1, 1994, in his article called "How to Conduct</p> <p>16 a Heuristic Analysis," that the output from using the</p> <p>17 heuristic evaluation method is a list of usability</p> <p>18 problems in the interface with references to those</p> <p>19 usability principles that were violated by the design</p> <p>20 in each case in the opinion of the evaluator?</p> <p>21 A. Yeah.</p> <p>22 MR. AIJAZ: Objection. Form.</p> <p>23 THE WITNESS: Sorry.</p> <p>24 I mean, as you have read that definition, I --</p> <p>25 yes, I agree with the way he has described it.</p> <p style="text-align: right;">Page 13</p>

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<p>1 MR. AIJAZ: And, Chad, I just ask if you're 2 going to read long passages and ask her to agree or 3 disagree that you provide it to her so that she could 4 review it. 5 MR. HUMMEL: Okay. Noted. 6 Q. Do you agree that the results of the 7 evaluation should be recorded either as written reports 8 from each evaluator, or by having the evaluators 9 verbalize their comments to an observer as they go 10 through the interface? 11 MR. AIJAZ: Objection. Form. 12 THE WITNESS: I mean, yes. As far as what 13 Nielsen has said, yeah. 14 BY MR. HUMMEL: 15 Q. Your assignment in this case from the FTC was 16 twofold. Correct? 17 A. If you are referring to the two questions on 18 page 3 of my report, yes. We -- it was -- well, I'll 19 allow you to ask me. 20 Q. I am. 21 In your report, you write: 22 "The FTC asked me to evaluate Match.com's 23 cancellation flow based on the following 24 inquiries: one, was Match.com's cancellation 25 flow easy to use; and, two, was Match.com's</p> <p style="text-align: right;">Page 14</p>	<p>1 BY MR. HUMMEL: 2 Q. Okay. 3 A. -- and it is my understanding that they 4 believe that the cancellation process was not simple to 5 use and that a number of consumers would have not been 6 able to complete it. 7 Q. Okay. So -- and do you understand that the 8 FTC alleges that the Match cancellation flow over time 9 has violated the Restore Online Shoppers Confidence 10 Act? 11 A. I'm not a lawyer, but to the best of my 12 understanding of that, yes. 13 Q. Have you read ROSCA? 14 A. Yes. 15 Q. What guidance does ROSCA give to companies in 16 the statute itself as to what the meaning of "simple" 17 is? 18 MR. AIJAZ: Objection. Calls for a legal 19 conclusion -- legal analysis, rather. 20 THE WITNESS: I -- I mean, I'd like to look at 21 ROSCA again, but I don't recall. 22 BY MR. HUMMEL: 23 Q. What guidance, if you know, has the FTC 24 publicly given to companies about how methods of 25 cancellation can comply with ROSCA's admonition that a</p> <p style="text-align: right;">Page 16</p>
<p>1 cancellation process easy to find?" 2 And I said "flow" in the first one. It says 3 "process." Right? 4 A. Yes. 5 Q. So were those the two inquiries that the FTC 6 asked you to examine? 7 A. Yes. 8 Q. And does "easy" mean simple? 9 MR. AIJAZ: Objection. Calls for a legal 10 conclusion. 11 THE WITNESS: I assumed that "easy" was 12 another word for simple as I did this analysis. 13 BY MR. HUMMEL: 14 Q. You used them synonymously? 15 A. Yes. 16 Q. Okay. Do you -- do you understand the 17 allegations that the FTC has made in this case about 18 the Match.com online cancellation flow over time? 19 A. I mean, I believe I do, but is there something 20 specific you are -- 21 Q. What's your understanding? 22 MR. AIJAZ: Objection. Vague. 23 THE WITNESS: Well, I have certainly read the 24 complaint -- 25</p> <p style="text-align: right;">Page 15</p>	<p>1 cancellation flow be simple? 2 MR. AIJAZ: Objection. Scope. It's outside 3 her area of expertise, and also, again, it calls for a 4 legal analysis. 5 THE WITNESS: I am familiar with the FTC.com 6 disclosures and their guidance on negative -- negative 7 option continuity plans. 8 But I can't remember off the top of my head if 9 that specifically addresses cancellation as we've been 10 discussing it here. 11 BY MR. HUMMEL: 12 Q. The second publication, Ms. King, that you 13 referenced does provide guidance on the meaning of 14 "simplicity." 15 A. Okay. 16 Q. And, basically, what it says is that the 17 cancellation flow has to be at least as easy to use as 18 the method used to subscribe. Right? 19 A. Yes. 20 MR. AIJAZ: Objection. Lacks foundation. 21 BY MR. HUMMEL: 22 Q. What analysis did you do, if any, for your 23 initial report to compare the relative simplicity of 24 the methods consumers used to sign up for Match.com 25 versus the cancellation method?</p> <p style="text-align: right;">Page 17</p>

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<p>1 A. I did not -- I -- it was outside the scope of 2 my report to look at the sign-up process. 3 Q. So you didn't attempt, did you, to evaluate 4 the FTC's own standard for evaluating simplicity. 5 Correct? 6 MR. AIJAZ: Objection. Calls for legal 7 analysis. Outside the scope of her expertise. 8 THE WITNESS: I'm not sure that that is a 9 standard. My sense is that it's a recommendation; but, 10 no, I did not look at the cancellation flow -- I mean, 11 sorry -- I apologize. 12 I did not look at the sign-up flow 13 specifically. 14 BY MR. HUMMEL: 15 Q. Have you read the FTC's sworn testimony in 16 this case given pursuant to Rule 30(b)(6) of the 17 Federal Rules of Civil Procedure? 18 MR. AIJAZ: Objection. Vague. 19 THE WITNESS: I'm not sure what you mean, 20 actually. 21 BY MR. HUMMEL: 22 Q. So the FTC designated a witness. 23 A. Okay. 24 Q. His name was Bikram Bandy, and he testified 25 under oath on behalf of the FTC; in fact, as the FTC</p> <p style="text-align: right;">Page 18</p>	<p>1 A. Yes. 2 Q. All right. And who selected the screenshots 3 to use? 4 Did you make the screenshots, or did the FTC 5 give you the screenshots? 6 A. The FTC gave them to me. 7 Q. Okay. And based on those, the videos -- the 8 three videos and the three sets of screenshots, you 9 attempted to evaluate whether Match.com's cancellation 10 process was simple and whether the cancellation process 11 was easy to find. Correct? 12 A. I did. Yes. 13 Q. All right. Now -- 14 MR. AIJAZ: I'll just say objection. 15 Misstates the report. 16 BY MR. HUMMEL: 17 Q. Okay. So I asked the FTC what factors might 18 be relevant in assessing whether a cancellation flow 19 was simple or not. 20 And if you can look at page 97. 21 And one of the things I asked them was: Would 22 time to completion be a relevant standard or a relevant 23 factor in considering whether a flow is simple or not? 24 That's at line 18 through 19 on page 97. 25 So my question is this: For any of the flows</p> <p style="text-align: right;">Page 20</p>
<p>1 under the rule, and the deposition was on 2 October 24, 2022. 3 Have you read that transcript? 4 A. I have not. 5 Q. All right. I'm going to put a copy in front 6 of you in case you want to reference it. 7 I am for counsel as well, and I just want to 8 ask you if some of the things that the FTC considers 9 relevant in terms of evaluating whether a flow is 10 simple or not were things that you considered. Okay? 11 A. Okay. 12 Q. Before we do that, let me just ask you this: 13 You evaluated three separate web flows. 14 Right? 15 A. Yes. Two thousand -- sorry. 16 Go ahead. 17 Q. 2016, 2019, and 2022. Correct? 18 A. Yes. 19 Q. And you viewed those on video. Right? 20 A. I viewed them on video as well as static 21 screenshots. 22 Q. And who chose the videos that were provided to 23 you to evaluate? 24 A. They were provided to me by the FTC. 25 Q. By counsel for the FTC?</p> <p style="text-align: right;">Page 19</p>	<p>1 that you evaluated, did you consider the average time 2 that it would take a consumer to start the cancellation 3 flow and to complete it? 4 A. Okay. First, let me just verify: It's this 5 page with the yellow -- 6 Q. Yeah. 7 A. Okay. Because there is a transcript page, and 8 then there's the actual -- 9 Q. Right, right -- 10 A. -- 97. 11 (The reporter requested that people not speak 12 at once.) 13 BY MR. HUMMEL: 14 Q. I asked -- I asked the FTC on line 14: 15 "QUESTION: I want to explore some of the 16 factors that might be used to evaluate whether 17 something is easy to use or not or easy to 18 find. Okay?" 19 I didn't even have your report when I asked 20 that question. Turns out I asked the same questions of 21 the FTC that you were asked by the FTC to solve. 22 Right? 23 So, then, I said: 24 "QUESTION: One would be time to 25 completion.</p> <p style="text-align: right;">Page 21</p>

6 (Pages 18 - 21)

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<p>1 "Do you agree with that?</p> <p>2 "ANSWER: Sure."</p> <p>3 So here's my question:</p> <p>4 A. Uh-huh.</p> <p>5 Q. Did you independently evaluate the average</p> <p>6 time it took for a user to complete the cancellation</p> <p>7 flow for any of the three flows that you -- that you</p> <p>8 examined?</p> <p>9 A. I did not.</p> <p>10 Q. Okay. And you would agree with the FTC that</p> <p>11 the question of whether or not a cancellation flow is</p> <p>12 simple is a, quote, "reasonable person standard," which</p> <p>13 is what the FTC testified to under oath on page 97,</p> <p>14 line 25.</p> <p>15 MR. AIJAZ: Objection. Calls for legal</p> <p>16 analysis. Outside the scope.</p> <p>17 THE WITNESS: Yeah. I mean, I -- I don't know</p> <p>18 specifically what you mean by "reasonable person" here.</p> <p>19 BY MR. HUMMEL:</p> <p>20 Q. I don't know either. That's what the FTC</p> <p>21 testified.</p> <p>22 Did you ever ask the FTC what they meant by</p> <p>23 "reasonable person standard"?</p> <p>24 A. No, I have not, but it was not a part of our</p> <p>25 discussion as far as I recall.</p> <p style="text-align: right;">Page 22</p>	<p>1 consumer to find the flow?</p> <p>2 MR. AIJAZ: Objection. Asked and answered.</p> <p>3 THE WITNESS: No, I did not.</p> <p>4 BY MR. HUMMEL:</p> <p>5 Q. Did you evaluate for any of the flows you</p> <p>6 looked at the average amount of time that it took a</p> <p>7 consumer -- strike that.</p> <p>8 Did you evaluate the maximum amount of time</p> <p>9 that it took a consumer to complete the flow?</p> <p>10 MR. AIJAZ: Objection. Asked and answered.</p> <p>11 THE WITNESS: No, I did not.</p> <p>12 BY MR. HUMMEL:</p> <p>13 Q. And I asked the FTC:</p> <p>14 "QUESTION: Is that issue relevant to</p> <p>15 whether or not a flow is simple or not?"</p> <p>16 But you didn't evaluate that.</p> <p>17 A. I did not evaluate maximum or minimum amounts</p> <p>18 of time.</p> <p>19 Q. Or average time?</p> <p>20 A. Or average time, no.</p> <p>21 Q. Okay. Now, the next thing I asked, if you</p> <p>22 look at page 98, lines 18 through 22, is:</p> <p>23 "QUESTION: Is the number of clicks</p> <p>24 relevant to whether or not a canceling</p> <p>25 mechanism is simple or not?"</p> <p style="text-align: right;">Page 24</p>
<p>1 Q. Okay. Now let's look at page 98:</p> <p>2 "QUESTION: Given the nature of the</p> <p>3 Match.com flows that you analyzed, do you</p> <p>4 believe there should have been a maximum time</p> <p>5 that a reasonable consumer or subscriber of</p> <p>6 Match.com could take to cancel their</p> <p>7 subscription on line?"</p> <p>8 A. I'm sorry. Can you repeat it?</p> <p>9 Q. Sure. And you can read the question. It's</p> <p>10 on --</p> <p>11 A. Oh, sorry.</p> <p>12 Q. -- page 99, line -- excuse me, page 98,</p> <p>13 starting on line 4.</p> <p>14 Do you believe, Ms. King, that there should be</p> <p>15 a maximum time that a reasonable consumer or subscriber</p> <p>16 of Match.com should take to cancel their subscription</p> <p>17 on line?</p> <p>18 MR. AIJAZ: Objection. Vague.</p> <p>19 THE WITNESS: No. Actually, I don't think</p> <p>20 that time is a determinative factor.</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q. Right. Not determinative.</p> <p>23 But did you -- in assessing whether or not the</p> <p>24 process is easy to use or whether it's easy to find,</p> <p>25 did you evaluate how much time on average it took a</p> <p style="text-align: right;">Page 23</p>	<p>1 And the witness said:</p> <p>2 "ANSWER: Could be. Sure."</p> <p>3 Now, I take it you did evaluate the number of</p> <p>4 clicks it takes to cancel on the Match.com flows that</p> <p>5 you evaluated. I think you wrote seven or eight.</p> <p>6 Right?</p> <p>7 A. So I measured steps. You can also measure</p> <p>8 clicks.</p> <p>9 I would not say that they are automatically</p> <p>10 synonymous, but I think steps, usually, is a -- I</p> <p>11 would -- I prefer to evaluate looking at steps rather</p> <p>12 than clicks just because I think clicks can potentially</p> <p>13 overmeasure in some cases.</p> <p>14 Q. I understand.</p> <p>15 And how many steps does it take during this</p> <p>16 time frame, 2019 through 2022 -- how many steps did it</p> <p>17 take for a user to subscribe to Match.com?</p> <p>18 A. So I think it depends on what you're meaning</p> <p>19 by "subscribe."</p> <p>20 I mean at what point of the process are you</p> <p>21 talking about?</p> <p>22 Q. From the time you log in to Match.com until</p> <p>23 you're a paying subscriber.</p> <p>24 A. I mean, does that include creating a</p> <p>25 profile --</p> <p style="text-align: right;">Page 25</p>

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<p>1 Q. Sure.</p> <p>2 A. -- and filling out the profile?</p> <p>3 Q. Of course. You have to. Right?</p> <p>4 A. I don't know if you have to, actually.</p> <p>5 Q. Have you signed on?</p> <p>6 Have you become a member?</p> <p>7 A. I am not a member of Match.com.</p> <p>8 Q. Have you gone through the subscription</p> <p>9 process?</p> <p>10 A. I have never subscribed to Match.com.</p> <p>11 Q. But in connection with your examination of the</p> <p>12 issues presented to you in this case, have you</p> <p>13 evaluated the subscription process?</p> <p>14 A. I have not evaluated the subscription process.</p> <p>15 Q. Okay. Then I asked a question starting on</p> <p>16 page 98, going on to 99. And I asked the question:</p> <p>17 "QUESTION: And the question of whether or</p> <p>18 not a cancellation mechanism is simple, online</p> <p>19 cancellation is simple, you'd also want to</p> <p>20 look at whether consumers can find the</p> <p>21 cancellation flow. Correct?"</p> <p>22 And the witness says:</p> <p>23 "ANSWER: Right. The first thing is easy</p> <p>24 to find. Right.</p> <p>25 "QUESTION: Easy to find. So if it's not</p> <p style="text-align: right;">Page 26</p>	<p>1 A. Right.</p> <p>2 Q. For any of the flows you evaluated, did you</p> <p>3 attempt to determine the percentage of consumers who</p> <p>4 attempted to find the cancellation flow and who were</p> <p>5 able to find it?</p> <p>6 A. Okay. No, I did not.</p> <p>7 Q. Okay. Then if you look at --</p> <p>8 MR. AIJAZ: Just one second.</p> <p>9 (Discussion between the witness and counsel.)</p> <p>10 MR. HUMMEL: Do you want to put that on the</p> <p>11 record?</p> <p>12 MR. AIJAZ: No.</p> <p>13 BY MR. HUMMEL:</p> <p>14 Q. What did he just tell you?</p> <p>15 MR. AIJAZ: That's privileged.</p> <p>16 MR. HUMMEL: No, it's not. You just talked to</p> <p>17 a witness during a deposition. It's absolutely not</p> <p>18 privileged, and it's absolutely subject to discovery.</p> <p>19 What did he just tell you?</p> <p>20 MR. AIJAZ: I'll tell you what I said. I</p> <p>21 said --</p> <p>22 MR. HUMMEL: No, no. I want it from the</p> <p>23 witness. I don't want it from you.</p> <p>24 MR. AIJAZ: I said, "Make sure you understand</p> <p>25 the question before you answer." That's what I said.</p> <p style="text-align: right;">Page 28</p>
<p>1 easy to find, it's not simple."</p> <p>2 All right. My question is this:</p> <p>3 Did you ever evaluate or study the percentage</p> <p>4 of consumers who attempted to find the cancellation</p> <p>5 flow on Match.com and who were able to find it?</p> <p>6 A. I'm sorry, can you repeat it just so I make</p> <p>7 sure I have it?</p> <p>8 MR. HUMMEL: Could I have that read back,</p> <p>9 please?</p> <p>10 (Record read as follows:</p> <p>11 "QUESTION: All right. My question is this:</p> <p>12 Did you ever evaluate or study the percentage</p> <p>13 of consumers who attempted to find the</p> <p>14 cancellation flow on Match.com and who were</p> <p>15 able to find it?")</p> <p>16 THE WITNESS: No, I did not.</p> <p>17 BY MR. HUMMEL:</p> <p>18 Q. Okay. For any of the flows you evaluated.</p> <p>19 Right?</p> <p>20 A. I'm sorry. In what -- did I -- can you repeat</p> <p>21 that?</p> <p>22 I want to make sure I'm following you</p> <p>23 precisely.</p> <p>24 Q. Sure. Sure.</p> <p>25 You evaluated three online cancellation flows?</p> <p style="text-align: right;">Page 27</p>	<p>1 BY MR. HUMMEL:</p> <p>2 Q. Is that what he told you?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So I then asked the FTC on page 99,</p> <p>5 line 8:</p> <p>6 "QUESTION: How would you evaluate that,</p> <p>7 whether something is easy to find?"</p> <p>8 And the answer is:</p> <p>9 "ANSWER: I think it's an objective</p> <p>10 standard based on, you know, what a reasonable</p> <p>11 consumer's experience on the website would</p> <p>12 be."</p> <p>13 Do you see that?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Did you study what a reasonable consumer's</p> <p>16 experience on the website actually would be?</p> <p>17 MR. AIJAZ: Objection. Vague.</p> <p>18 THE WITNESS: That's difficult to answer</p> <p>19 without, again, grasping precisely what you mean by</p> <p>20 "reasonable consumer."</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q. Do you have an understanding of what the</p> <p>23 reasonable consumer standard is?</p> <p>24 A. I don't recall off the top of my head.</p> <p>25 Q. Do you know what a performance standard is?</p> <p style="text-align: right;">Page 29</p>

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<p>1 A. I mean, maybe, but I'd rather hear you tell me 2 what it is.</p> <p>3 Q. Well, you're the -- you're the purported 4 expert in usability.</p> <p>5 From a usability standpoint --</p> <p>6 A. Okay.</p> <p>7 Q. -- what is a performance standard?</p> <p>8 A. I mean, I think that depends on what you're 9 measuring. I'm not -- again, I'm just not sure exactly 10 what you are --</p> <p>11 Q. Well, in this --</p> <p>12 A. -- alluding to.</p> <p>13 Q. -- in this case, you're measuring how many 14 consumers attempt to find the --</p> <p>15 A. Okay --</p> <p>16 Q. -- cancellation flow.</p> <p>17 A. Sure.</p> <p>18 Q. -- and how many --</p> <p>19 (The reporter requested that people not speak 20 at once.)</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q. In this case, the question to be evaluated is 23 whether consumers can find a cancellation flow, and a 24 performance standard would be how consumers actually 25 perform in attempting to find the flow.</p> <p style="text-align: right;">Page 30</p>	<p>1 that it -- I was not -- I did not understand the 2 origination of those numbers and how they were 3 analyzed.</p> <p>4 Q. Okay. Did you ask the FTC to provide you that 5 information?</p> <p>6 A. So it's my understanding that there has been 7 information provided at different points throughout 8 this whole process.</p> <p>9 I believe I asked questions about that back in 10 January, and I think -- I believe I was told that they 11 didn't have that data.</p> <p>12 But, again, I don't know precisely which piece 13 of the data you're talking about.</p> <p>14 But at any rate, it wasn't clear to me that 15 the FTC was given data that we could objectively say 16 measured these things in a way that I could crystallly 17 clear say, "Yes, I understand this and could do 18 something with it."</p> <p>19 Q. All right. So let's look at, again, the FTC's 20 sworn testimony on page 99 of -- of the deposition, 21 lines 20 through 23.</p> <p>22 And this is, again, in connection with the 23 question of whether Match.com's cancellation process is 24 easy to find.</p> <p>25 And I asked him:</p> <p style="text-align: right;">Page 32</p>
<p>1 And I take it you didn't study that. Correct?</p> <p>2 MR. AIJAZ: Objection. Foundation.</p> <p>3 THE WITNESS: I'm sorry. I just wouldn't have 4 used that terminology, so I'm trying to parse exactly 5 what you mean.</p> <p>6 Did I study -- did I conduct a usability study 7 of the flow?</p> <p>8 BY MR. HUMMEL:</p> <p>9 Q. Yes.</p> <p>10 A. No. I did not conduct a usability study of 11 the flow with users.</p> <p>12 Q. And you didn't conduct a -- a performance 13 study; in other words, an assessment of data which 14 shows how many consumers attempted to find the flow and 15 how many actually found it.</p> <p>16 A. Okay. Now I --</p> <p>17 MR. AIJAZ: Objection. Vague and foundation.</p> <p>18 THE WITNESS: Now I understand what you mean.</p> <p>19 No, I did not.</p> <p>20 BY MR. HUMMEL:</p> <p>21 Q. Okay. And you have no critique that I can see 22 in your rebuttal report of Mr. Ward's use of the 23 company data relating to average time for completion 24 and effectiveness and completion rates. Correct?</p> <p>25 A. It's not that I didn't have a critique. It's</p> <p style="text-align: right;">Page 31</p>	<p>1 "QUESTION: You could do a study. Right?</p> <p>2 You could ask a series of consumers, 'Hey, 3 look at this website. Where would you go to 4 find our subscription cancellation flow?'"</p> <p>5 I asked that question.</p> <p>6 And the FTC, under oath, said:</p> <p>7 "ANSWER: Sure. You could do that. It's 8 possible."</p> <p>9 Why didn't you do that?</p> <p>10 A. That was outside the scope of what I agreed to 11 do on this case. They didn't ask me to conduct a 12 usability study.</p> <p>13 Q. That's my question. They didn't ask you to 14 conduct a usability study.</p> <p>15 Why? Do you know?</p> <p>16 A. No. I don't know.</p> <p>17 Q. Did you attempt a usability study in this 18 case?</p> <p>19 A. No, I did not.</p> <p>20 Q. So you didn't attempt a usability study, get 21 bad results, and then not put it in your report?</p> <p>22 A. No.</p> <p>23 Q. Okay. I'm correct, you didn't do that?</p> <p>24 A. Right. I did not do that.</p> <p>25 Q. Did you ask the FTC, "Hey, I really should do</p> <p style="text-align: right;">Page 33</p>

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<p>1 a usability study?"</p> <p>2 A. No, I did not.</p> <p>3 Q. Okay.</p> <p>4 Could you show me, please --</p> <p>5 This is a document that was marked by the FTC</p> <p>6 in their deposition of Brandon Ward.</p> <p>7 A. Brandon Ward? Yeah.</p> <p>8 Q. I'm sorry, I'll keep my voice up.</p> <p>9 Have you read the deposition of Brandon Ward?</p> <p>10 A. I skimmed a rough copy of it.</p> <p>11 Q. What does "skimmed" mean?</p> <p>12 A. It was provided to me yesterday or the day</p> <p>13 before; I think, maybe, two days before at most. So</p> <p>14 I ...</p> <p>15 MR. HUMMEL: Exhibit 3?</p> <p>16 (Discussion off the record.)</p> <p>17 (Deposition Exhibit 3 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. HUMMEL:</p> <p>20 Q. Do you have in front of you a document</p> <p>21 entitled "How to Conduct a Heuristic Evaluation"?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And this is published by the</p> <p>24 Nielsen Norman Group?</p> <p>25 A. Yes, it is.</p> <p style="text-align: right;">Page 34</p>	<p>1 A. This one is very new.</p> <p>2 Q. Have you seen this before?</p> <p>3 A. Let me take a moment to look at it.</p> <p>4 This is so new that I may not have seen it.</p> <p>5 That's right. June 25. And today is, what, July 27?</p> <p>6 No, I don't think I've seen this one. I'm</p> <p>7 familiar with the articles they cite at the</p> <p>8 beginning --</p> <p>9 Q. Sure.</p> <p>10 A. -- but I don't think I have seen this one.</p> <p>11 Q. Okay. The first sentence of the article</p> <p>12 reads:</p> <p>13 "A heuristic evaluation is a method for</p> <p>14 identifying design problems in a user</p> <p>15 interface."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you agree that that is the definition of a</p> <p>19 heuristic evaluation?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. So doing a heuristic analysis does not</p> <p>22 answer the question of whether a process is simple or</p> <p>23 not; it simply identifies problems. Correct?</p> <p>24 MR. AIJAZ: Objection. Calls for a legal</p> <p>25 analysis. Outside the scope.</p> <p style="text-align: right;">Page 36</p>
<p>1 Q. And you considered them, I think you said, the</p> <p>2 authoritative guide to how to conduct a heuristic</p> <p>3 evaluation. Right?</p> <p>4 MR. AIJAZ: Objection. Misstates the</p> <p>5 testimony.</p> <p>6 THE WITNESS: An authoritative, yeah; not the</p> <p>7 only.</p> <p>8 BY MR. HUMMEL:</p> <p>9 Q. I understand.</p> <p>10 But if you look, please, the first sentence of</p> <p>11 this summary says:</p> <p>12 "Step-by-step instructions to</p> <p>13 systematically review your product to find</p> <p>14 potential usability and experience problems."</p> <p>15 Do you see that?</p> <p>16 A. Sorry. No, I don't.</p> <p>17 Wait.</p> <p>18 Q. Under "How to Conduct" --</p> <p>19 A. Yes. Yes. I see the subhead.</p> <p>20 Q. And then this is written by Kate Moran and</p> <p>21 Kelley Gordon.</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. On June 25, 2023.</p> <p>25 So it's timely. Right?</p> <p style="text-align: right;">Page 35</p>	<p>1 THE WITNESS: It's a method for identifying</p> <p>2 design problems, but it is up to the expertise of the</p> <p>3 evaluator to apply that method and use their training</p> <p>4 as a basis for explaining what those problems mean.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q. And then you see a heading that says:</p> <p>7 "When to Conduct an Heuristic Evaluation."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. First sentence there reads:</p> <p>11 "Heuristic evaluations are useful for</p> <p>12 identifying glaring problems in an interface."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. All right. And then there's a sentence --</p> <p>16 there's a next paragraph which reads:</p> <p>17 "Heuristic evaluations are useful for</p> <p>18 stretching a limited UX research budget."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Did the FTC place any limits on the amount you</p> <p>22 could spend in conducting your analysis to answer the</p> <p>23 questions they posed?</p> <p>24 A. I mean, there was certainly a budget for the</p> <p>25 contract. I did not have unlimited funds.</p> <p style="text-align: right;">Page 37</p>

<p>1 BY MR. HUMMEL:</p> <p>2 Q. Did you tell the FTC, "Hey, in order for any</p> <p>3 conclusions I give you based on a heuristic analysis to</p> <p>4 be valid or reliable, I need to test them with a</p> <p>5 usability study"?</p> <p>6 MR. AIJAZ: Chad, objection. That calls for</p> <p>7 protected information.</p> <p>8 The rule is very clear on what you can ask</p> <p>9 about with respect to communications. This is far</p> <p>10 outside of what's allowable.</p> <p>11 So don't answer.</p> <p>12 MR. HUMMEL: You're instructing her not to</p> <p>13 answer?</p> <p>14 MR. AIJAZ: Yeah, because, you know, it's not</p> <p>15 allowed what you're asking for. 26(b)(4) if you want</p> <p>16 it.</p> <p>17 MR. HUMMEL: Well, what she did and didn't do</p> <p>18 is highly probative of whether what she did is reliable</p> <p>19 or not.</p> <p>20 MR. AIJAZ: I agree. What she did. But not</p> <p>21 communications.</p> <p>22 MR. HUMMEL: Look. If the FTC wants to --</p> <p>23 Q. Would you be comfortable in a situation</p> <p>24 whereby the Federal Trade Commission, which is formed</p> <p>25 in part to enforce consumer protection laws including</p> <p style="text-align: right;">Page 42</p>	<p>1 reporter to mark as Exhibit 4 a document entitled</p> <p>2 "Nielsen Norman Group Heuristic Evaluation Workbook."</p> <p>3 MR. AIJAZ: Do you want to take a break while</p> <p>4 you're looking for it?</p> <p>5 MR. HUMMEL: Sure. We can go off the record.</p> <p>6 (Recess from 9:40 A.M. to 9:51 A.M.)</p> <p>7 (Deposition Exhibit 4 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. HUMMEL:</p> <p>10 Q. Ms. King, you understand you're still under</p> <p>11 oath?</p> <p>12 A. I do.</p> <p>13 Q. Any reason you can't continue to give your</p> <p>14 best truthful testimony here this morning?</p> <p>15 A. Nope.</p> <p>16 Q. Okay. I have marked as Exhibit Number 4 a</p> <p>17 document also published by the Nielsen Norman Group</p> <p>18 called a "Heuristic Evaluation Workbook."</p> <p>19 Do you see that?</p> <p>20 A. I do see it.</p> <p>21 Q. Did you utilize this workbook in connection</p> <p>22 with your heuristic evaluation?</p> <p>23 A. I did not.</p> <p>24 Q. Did the two individuals that also did or</p> <p>25 assisted you in your evaluation use this workbook, to</p> <p style="text-align: right;">Page 44</p>
<p>1 ROSCA, told you to do an assignment that you couldn't</p> <p>2 validate based on some test that you could -- according</p> <p>3 to the FTC, that could be done?</p> <p>4 MR. AIJAZ: Objection. Form. This is an</p> <p>5 incomplete hypothetical. And it's vague.</p> <p>6 But you can answer.</p> <p>7 THE WITNESS: So I think that you are reading</p> <p>8 this article extremely literally.</p> <p>9 And if you look back at the citing research</p> <p>10 into what -- how you develop heuristic evaluations,</p> <p>11 what you would find is that what -- how the Nielsen</p> <p>12 Norman Group frames this discussion is very much</p> <p>13 focused toward a set of practitioners.</p> <p>14 But, fundamentally, what underlies it is a</p> <p>15 method; a method that was developed that you can apply</p> <p>16 in a variety of different contexts.</p> <p>17 And the way that Nielsen has developed this</p> <p>18 method has been mostly -- I wouldn't -- "commercialize"</p> <p>19 is maybe not the right word, but he's tried to make it</p> <p>20 accessible and put it within a particular context.</p> <p>21 But if you look at the academic literature on</p> <p>22 this topic, you don't necessarily have to follow what</p> <p>23 this article says line by line in order to conduct a</p> <p>24 heuristic evaluation.</p> <p>25 MR. HUMMEL: I'm going to ask the court</p> <p style="text-align: right;">Page 43</p>	<p>1 your knowledge?</p> <p>2 A. I do not believe they did.</p> <p>3 Q. Now, you said you've conducted 30 usability</p> <p>4 studies in your career, or at least 30. Right?</p> <p>5 A. Approximately.</p> <p>6 Q. That's a best estimate.</p> <p>7 So back to the transcript of Mr. Bandy,</p> <p>8 page 99, line 20, where I asked him:</p> <p>9 "QUESTION: You could do a study. Right?"</p> <p>10 And he says:</p> <p>11 "ANSWER: Sure. You could do that. It's</p> <p>12 possible."</p> <p>13 Right?</p> <p>14 Have you thought about how you would design a</p> <p>15 study that would evaluate whether consumers who are</p> <p>16 attempting to cancel on the Match.com website -- any of</p> <p>17 the versions you examined -- how you would design a</p> <p>18 study that would examine whether a reasonable consumer</p> <p>19 could find a cancellation flow?</p> <p>20 MR. AIJAZ: Objection. Form. And vague.</p> <p>21 THE WITNESS: I mean, I have some general</p> <p>22 ideas, but I did not spend much time thinking that</p> <p>23 through.</p> <p>24 BY MR. HUMMEL:</p> <p>25 Q. What are those general ideas, if you can?</p> <p style="text-align: right;">Page 45</p>

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<p>1 A. Well, I mean, the -- the challenge, of course, 2 is recreating the website. 3 So if you are going to study 2016, 2018, 4 and -- sorry, 2022, then, you know, there are a number 5 of different ways you could approach it. But, you 6 know, the -- the first starting point is how you 7 recreate some approximation of the website and provide 8 a -- I would say, like, a native task for people to 9 engage with. 10 Now, that's all possible. You don't even have 11 to make a fully functional prototype of the website to 12 do that. But that -- if you did that -- I mean, again, 13 that's one way you could do it. 14 You know, you could in some cases, although 15 maybe not as ideal, use, you know, paper prototyping to 16 take somebody through a similar type of task. 17 But overall, the goal in doing so is to 18 conduct a study that is reliable and that is not overly 19 directive, meaning that you want to situate a task 20 within somebody's -- to the best that you can, 21 somebody's natural experience with the website. 22 So if you put the website in front of them and 23 say, "Go cancel," that's a very directed task. And 24 that potentially influences the outcome in the sense 25 that if you direct them to cancel, they are going to</p> <p style="text-align: right;">Page 46</p>	<p>1 BY MR. HUMMEL: 2 Q. What was your budget given to you by the FTC 3 to perform this analysis that ultimately resulted in 4 your first report? 5 A. I believe the first phase was around \$40,000. 6 Q. And how much have you been paid to date for 7 your opinions? 8 MR. AIJAZ: Objection. I didn't like the form 9 of that, but go ahead and answer. 10 THE WITNESS: You mean per hour or total 11 billing -- 12 BY MR. HUMMEL: 13 Q. Total. 14 A. -- up until now? 15 I am not sure. I want to say that we're at -- 16 and this includes my assistants. I don't have my rate 17 pulled out separately. I think we've billed in the 18 order of \$75,000. But, again, not 100 percent sure. 19 MR. AIJAZ: Let me just get a cleaner 20 objection. 21 She was not paid for her opinion, so that 22 misstates -- there's a lack of foundation there. She 23 was paid for her report. 24 MR. HUMMEL: Well, that's testimony and 25 speaking objection and completely improper.</p> <p style="text-align: right;">Page 48</p>
<p>1 probably do everything they can to cancel because you 2 are paying them for their time in order to do that. 3 So the challenge is to work in a task in a way 4 that doesn't encourage them to modify their use and is 5 as naturalistic as possible. 6 Q. Sure. My question was actually simpler, which 7 is: 8 How could you test whether a consumer could 9 find the cancellation flow? 10 A. Well, again, I mean, I think it's dependent on 11 how you would -- how you would kind of construct the -- 12 the site in order to actually run such a study. 13 Q. Could -- I mean, could you imagine how you 14 would design a study where you would test whether it's 15 easy for a consumer to -- well, to -- whether it's easy 16 to find the cancellation process? 17 MR. AIJAZ: Objection. Scope and calls for 18 speculation. 19 THE WITNESS: It's possible. And I will say 20 that, you know, as I am talking -- as I am talking 21 through this, I am thinking mostly about testing those 22 older versions. You know, there is a difference 23 between doing that and testing the live website, for 24 example. That's a different potential tactic. 25</p> <p style="text-align: right;">Page 47</p>	<p>1 MR. AIJAZ: It was a bad question. 2 MR. HUMMEL: It's a really bad objection, and 3 it's improper and might be sanctionable. 4 Q. So let's look at -- 5 MR. AIJAZ: No. 6 MR. HUMMEL: You can't testify. 7 Q. So let's go on. 8 On page 101, I asked the FTC a question at 9 line 14. 10 "QUESTION: Is one factor in assessing 11 whether a cancellation flow is simple or not 12 its effectiveness?" 13 I go on: 14 "In other words, the percentage of 15 consumers who attempt to cancel using a flow 16 and succeed, could that be relevant?" 17 "ANSWER: Sure." 18 In connection with any of the flows that you 19 evaluated in this case to answer the FTC's two 20 inquiries, did you measure the effectiveness of the 21 flow? 22 MR. AIJAZ: Objection. Vague. 23 BY MR. HUMMEL: 24 Q. As defined in this question? 25 A. Okay. So you're defining "effectiveness" as</p> <p style="text-align: right;">Page 49</p>

<p>1 the percentage of consumers who attempt to cancel using 2 a flow and succeed. Is that correct? 3 Q. Exactly. 4 A. Okay. Let me consider that for a moment. 5 I'm sorry. So now take me back to the first 6 question, which was, did I -- 7 Q. Measure effectiveness. 8 A. Okay. Did I measure effectiveness by looking 9 at consumer behavior, whether in a usability test or 10 other -- 11 Q. Performance test. Right. 12 A. No, I did not. 13 Q. Is there a reason why? 14 A. Again, that was not -- outside the scope of 15 the work that I agreed to do. 16 Q. Well, Mr. Ward's report cited company data on 17 effectiveness, and you had no rebuttal to that data. 18 Do you have any opinions about that data, as 19 you sit here today, that you intend to express at trial 20 that are not contained in either report? 21 MR. AIJAZ: Objection. Foundation. 22 THE WITNESS: I would need to look at 23 precisely what data we're talking about. 24 BY MR. HUMMEL: 25 Q. The effectiveness data; the percentage of</p> <p style="text-align: right;">Page 50</p>	<p>1 reading "effectiveness" again. 2 Yes. That is possible. 3 BY MR. HUMMEL: 4 Q. And you didn't do it. 5 A. I did not do that. 6 Q. So just to wrap this up, you didn't look at 7 effectiveness, you didn't look at average time to 8 completion; you didn't look at maximum or minimum times 9 that it takes for a consumer to cancel on the Match.com 10 flows that you studied; you didn't do any sort of 11 evaluation of whether a consumer -- any sort of study 12 to determine whether consumers, in fact, can find the 13 flow. 14 Is that all correct? 15 MR. AIJAZ: Objection. Vague. Form. And 16 misstates testimony. 17 THE WITNESS: Can we go through them one by 18 one so I can answer? 19 BY MR. HUMMEL: 20 Q. Yeah. So you didn't attempt to measure 21 effectiveness as defined in this question on page 101 22 of the FTC's deposition testimony. 23 A. You know, I did not attempt to do that using a 24 user study. True. 25 Q. By the way, in terms of the -- a question of</p> <p style="text-align: right;">Page 52</p>
<p>1 consumers who attempted to cancel -- entered the flow 2 intending to cancel and effectively did so. 3 A. Okay. Can you point me to his report so we 4 can discuss precisely those numbers? 5 I mean, I think I know what you're talking 6 about, but -- 7 Q. I'm not going to do that now. 8 A. Okay. 9 Q. My question is: Do you have -- as you sit 10 here today, is there any opinion about that company 11 data that you intend to offer at trial that is not 12 contained in your two report? 13 MR. AIJAZ: Objection. She answered the 14 question, and she said what she would need to do to 15 answer it. 16 THE WITNESS: I mean, I have some thoughts 17 related to how it was presented in his report, but I 18 have not independently looked at that data because, 19 again, I'm not even sure it was available to me at the 20 time I was doing either report. 21 BY MR. HUMMEL: 22 Q. You could attempt to measure effectiveness by 23 doing a usability study. Correct? 24 MR. AIJAZ: Objection. Calls for speculation. 25 THE WITNESS: Sorry. I'm making sure -- I'm</p> <p style="text-align: right;">Page 51</p>	<p>1 whether Match.com's cancellation flow is easy to use, 2 what would you consider to be an appropriate 3 effectiveness percentage? 4 MR. AIJAZ: Objection. Vague. 5 THE WITNESS: I'm sorry. So are you asking me 6 what percentage of consumers who are subscribed, what 7 is an effective cancellation rate? 8 BY MR. HUMMEL: 9 Q. Yeah. 10 A. Ideally, 100 percent. 11 Q. Okay. 12 A. If I have subscribed to a service and I do not 13 wish to be subscribed anymore, I should be able to 14 unsubscribe. Full stop. 15 Q. Sure. 16 And in this case, in Match, if you weren't 17 able to do the online flow, you could call customer 18 service. Right? 19 A. I believe so. But I have not seen precisely 20 how individuals locate that phone number, meaning I 21 don't know where it was offered. 22 So I don't have a -- I'm sorry, did you -- 23 MR. AIJAZ: No, no. I'll wait. 24 THE WITNESS: Okay. So I will say, in theory, 25 yes, but it is dependent on how accessible that phone</p> <p style="text-align: right;">Page 53</p>

<p>1 number was. 2 BY MR. HUMMEL: 3 Q. Sure. 4 MR. AIJAZ: Objection. Foundation to the 5 question. 6 BY MR. HUMMEL: 7 Q. And you haven't offered any opinions with 8 whether or not that phone number is easily accessible. 9 Correct? 10 MR. AIJAZ: Objection. Form. 11 THE WITNESS: I would need to go back to my 12 report because I believe I talk about it -- I may talk 13 about it in relation to looking at some of the FAQs. 14 So I'm -- I can't say definitively off the top of my 15 head right now. 16 BY MR. HUMMEL: 17 Q. Let me ask it a better way. 18 Do you have an opinion as you sit here today 19 that you're willing to offer under penalty of perjury 20 as to whether the phone number to contact customer 21 service is easily accessible to consumers on the 22 Match.com website? 23 A. I have concerns about it. But I don't -- I 24 did not study specifically all of the different places 25 where one could access the phone number.</p> <p style="text-align: right;">Page 54</p>	<p>1 it's easy to cancel by text message. 2 MR. AIJAZ: Objection. Foundation. 3 THE WITNESS: I wasn't sure if that was 4 possible; but, no. 5 BY MR. HUMMEL: 6 Q. How about chat function? 7 A. I don't know if Match had a chat function for 8 the scope of time during which I looked at the 9 report -- 10 Q. Either way -- 11 A. I mean, looked at the site. 12 Q. -- you have no opinion. Correct? 13 A. Right. 14 Q. So your sole focus was the online cancellation 15 flow for the Match.com website. Correct? 16 A. In terms of evaluation, yes. 17 Q. And you have no opinions about mobile app 18 cancellation processes. Right? 19 A. That is correct. I was not asked to look at 20 the mobile flows. 21 Q. Now, if you look at -- just to finish up on 22 the FTC's sworn testimony here on page 100. 23 So I ask a question that starts on line 13: 24 "QUESTION: Well, in the Match.com 25 cancellation flow, I think you described the</p> <p style="text-align: right;">Page 56</p>
<p>1 Q. Do you have an opinion about whether or not it 2 is easy for a Match.com subscriber to cancel by phone? 3 MR. AIJAZ: Objection. Scope. 4 MR. HUMMEL: Right. I'm trying to determine 5 the scope. 6 I don't want her to get up on the stand and 7 testify at trial, in other words, Counsel, "Hey, I've 8 looked at the phone cancellation process now, and it's 9 not easy or simple." 10 Q. You have no opinion about the phone 11 cancellation process. Correct? 12 A. If by "process" you mean, you know, calling 13 and the actual process somebody goes through when 14 they're talking to the agent or how simple or easy that 15 is, no, I have no insight into that piece of it. 16 Q. And no opinions about wait times on the 17 phone -- 18 A. Right. None. 19 (The reporter requested that people not speak 20 at once.) 21 BY MR. HUMMEL: 22 Q. And you have no opinions about whether or not 23 it's easy to cancel by email. Correct? 24 A. No. I do not. 25 Q. And you have no opinions about whether or not</p> <p style="text-align: right;">Page 55</p>	<p>1 steps that would be taken: You first have to 2 click on the gear, then you click on 'Manage 3 Subscription.' 4 "Does the FTC contend that those links are 5 not clear? 6 "ANSWER: I think that's more about 7 difficulty in finding the cancellation flow. 8 I think you'd use the term 'clear verbiage,' 9 'clear wording,' and that when I said that, I 10 was more referring to the things like 'before 11 you go' language and after, you know, 'cancel 12 subscription link.' That's not clear. When 13 the 'Continue' button was on the 'Save' offer, 14 that's not clear." 15 Do you see that? 16 A. I do see that. 17 Q. Did you do any empirical study of how users 18 actually react to the "before you go" language? 19 A. Such as a copy test, for example? 20 Q. Yes. 21 A. No, I did not. 22 Q. Did you do any sort of empirical study or copy 23 test about how consumers receive the subscription link? 24 A. No, I did not. 25 Q. Did you do any copy test or empirical analysis</p> <p style="text-align: right;">Page 57</p>

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<p>1 about how consumers perceive and act upon "Continue"</p> <p>2 buttons on the flow?</p> <p>3 MR. AIJAZ: Objection. Vague.</p> <p>4 THE WITNESS: No, not specifically.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q. I just want to be clear.</p> <p>7 You -- when you talked about effectiveness</p> <p>8 rate before, you said ideally, it would be</p> <p>9 "100 percent. Full stop." Is that right?</p> <p>10 A. Yeah.</p> <p>11 Q. Now, are you saying that anything less than</p> <p>12 100 percent violates ROSCA?</p> <p>13 MR. AIJAZ: Objection. Misstates the</p> <p>14 testimony and calls for legal analysis.</p> <p>15 BY MR. HUMMEL:</p> <p>16 Q. Let me say it another way:</p> <p>17 Are you saying that anything less than</p> <p>18 100 percent in a usability study would make something</p> <p>19 not easy to use?</p> <p>20 A. No. That's not what I'm saying.</p> <p>21 Q. All right. I just want to be clear.</p> <p>22 So it's your -- it's the goal that it would be</p> <p>23 100 percent --</p> <p>24 A. Right.</p> <p>25 Q. -- but you're not opining that something less</p> <p style="text-align: right;">Page 58</p>	<p>1 So that's sort of a 90 percent, and you do</p> <p>2 that using controls, et cetera, to eliminate the noise.</p> <p>3 You know that. You've done consumer surveys.</p> <p>4 Right?</p> <p>5 Correct?</p> <p>6 MR. AIJAZ: Objection. Form.</p> <p>7 BY MR. HUMMEL:</p> <p>8 Q. That's why you have a control.</p> <p>9 MR. AIJAZ: Objection. Form and foundation.</p> <p>10 THE WITNESS: I've done consumer surveys. If</p> <p>11 you're asking about an experimental survey with a</p> <p>12 control group, I'm not quite following how that leads</p> <p>13 to your 10 percent yet, but please continue.</p> <p>14 BY MR. HUMMEL:</p> <p>15 Q. Did you do a consumer survey in the</p> <p>16 Commerce Planet case?</p> <p>17 A. It was a long time ago.</p> <p>18 No, I did not.</p> <p>19 Q. Your opinion was, basically, that material</p> <p>20 terms were presented below the fold on a website.</p> <p>21 Right?</p> <p>22 That was kind of --</p> <p>23 A. Yeah, I think that's an okay summary of that.</p> <p>24 Q. And the judge ultimately, in calculating</p> <p>25 restitution amounts, said, "I'm going to assume</p> <p style="text-align: right;">Page 60</p>
<p>1 than 100 percent might still be simple.</p> <p>2 MR. AIJAZ: Objection. Form.</p> <p>3 THE WITNESS: I'm just trying to make sure I'm</p> <p>4 parsing your question correctly.</p> <p>5 BY MR. HUMMEL:</p> <p>6 Q. Me too. Let's rephrase it.</p> <p>7 It's not your testimony, Ms. King, that</p> <p>8 something less than 100 percent could not also be</p> <p>9 simple.</p> <p>10 A. I'm sorry, I'm just trying to take that in.</p> <p>11 What I am saying is that the goal -- if a</p> <p>12 consumer wants to cancel a subscription, they should be</p> <p>13 able to cancel it. Full stop.</p> <p>14 Ideally, you would have a cancellation flow</p> <p>15 that would allow that as -- at as high of an</p> <p>16 effective -- effectiveness rate, sorry, as possible.</p> <p>17 That would be the goal.</p> <p>18 Q. Do you have any opinions about -- well, strike</p> <p>19 that.</p> <p>20 Let me ask you this: There's an old maxim --</p> <p>21 strike that.</p> <p>22 There's an old maxim in marketing consumer</p> <p>23 perception research that 10 percent of people in the</p> <p>24 world, when asked "Is Chad holding up a pen right now?"</p> <p>25 would say no because they just get it wrong. Right?</p> <p style="text-align: right;">Page 59</p>	<p>1 50 percent of the people didn't read below the fold, so</p> <p>2 I'm going to cut the FTC's restitution demand in half."</p> <p>3 Do you remember that?</p> <p>4 MR. AIJAZ: Objection. Calls for a legal</p> <p>5 analysis.</p> <p>6 THE WITNESS: I was not involved in the case</p> <p>7 at that point.</p> <p>8 BY MR. HUMMEL:</p> <p>9 Q. Okay. Your testimony was limited to whether</p> <p>10 consumers would reasonably perceive disclaimers that</p> <p>11 were below the fold; that this is the package they were</p> <p>12 actually buying as opposed to what was advertised on</p> <p>13 top.</p> <p>14 Do you remember that?</p> <p>15 A. Like I said, it's been a while.</p> <p>16 MR. AIJAZ: Objection. Form.</p> <p>17 THE WITNESS: I mean, the -- it wasn't just</p> <p>18 the disclaimers, though, if I'm remembering correctly.</p> <p>19 It was also that there were, I think, preselected check</p> <p>20 boxes that were enrolling them in a negative option</p> <p>21 continuity plan.</p> <p>22 BY MR. HUMMEL:</p> <p>23 Q. Without a disclosure of what they were</p> <p>24 actually buying up front. Right?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 61</p>

<p>1 Q. Yeah. Okay.</p> <p>2 And in that case, you didn't do a usability</p> <p>3 study -- or a consumer perception study.</p> <p>4 A. I didn't. I can't remember if somebody else</p> <p>5 did. It's just been too long.</p> <p>6 Q. Okay. Have you ever been qualified as an</p> <p>7 expert in the field of consumer perception?</p> <p>8 A. I don't believe I've been specifically offered</p> <p>9 in that context.</p> <p>10 Q. Have you ever been qualified as an expert in</p> <p>11 survey design?</p> <p>12 A. I have expertise in survey design, but I don't</p> <p>13 believe I've ever been offered up to the court as a</p> <p>14 survey expert. It's generally been within the capacity</p> <p>15 of human-computer interaction which, of course, survey</p> <p>16 analysis is one of our methods.</p> <p>17 Q. And human-consumer interaction is --</p> <p>18 A. Human-computer interaction. Sorry.</p> <p>19 Q. Human-computer interaction is often referred</p> <p>20 to as "HCI."</p> <p>21 A. Yes.</p> <p>22 Q. And you consider yourself an expert in HCI.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. How many times have you been qualified</p> <p>25 to testify in court as an expert?</p> <p style="text-align: right;">Page 62</p>	<p>1 A. Technology developed for the public interest.</p> <p>2 Can be thinking -- you can -- can be for</p> <p>3 government, but more that it's independent of private</p> <p>4 influence.</p> <p>5 Q. Can you tell me how you came to be retained in</p> <p>6 this case?</p> <p>7 A. The FTC --</p> <p>8 MR. AIJAZ: Objection. Vague.</p> <p>9 THE WITNESS: The FTC called me.</p> <p>10 BY MR. HUMMEL:</p> <p>11 Q. Do you recall who called you?</p> <p>12 THE WITNESS: It might have been you. I can't</p> <p>13 remember.</p> <p>14 MR. AIJAZ: You might want to clarify.</p> <p>15 THE WITNESS: I realize I haven't actually</p> <p>16 said your last name out loud, so I'm struggling with</p> <p>17 it.</p> <p>18 MR. AIJAZ: Aijaz.</p> <p>19 THE WITNESS: Mr. Aijaz may have been the one</p> <p>20 that called me.</p> <p>21 BY MR. HUMMEL:</p> <p>22 Q. Do you recall that he called you?</p> <p>23 A. I know I spoke with him on the phone. I know</p> <p>24 he was the one -- Mr. Tepfer -- Tepfler.</p> <p>25 Q. Reid Tepfer.</p> <p style="text-align: right;">Page 64</p>
<p>1 A. I have only testified in one case. Everything</p> <p>2 else I've worked on has settled.</p> <p>3 Q. And that was Commerce Planet?</p> <p>4 A. Yes.</p> <p>5 Q. And you've never been retained or offered</p> <p>6 testimony on behalf of a private party; only</p> <p>7 government. Right?</p> <p>8 A. I have been retained by a class action firm,</p> <p>9 just to make sure I'm understanding you correctly.</p> <p>10 Q. No, that's fair. That's a fair clarification.</p> <p>11 But you don't provide consulting or advice for</p> <p>12 private companies. Is that correct?</p> <p>13 A. No. Generally due to conflict of interest</p> <p>14 with my role at Stanford.</p> <p>15 Q. Are what does that mean, with your role at</p> <p>16 Stanford?</p> <p>17 A. Yes. My full-time job.</p> <p>18 Q. No, I -- I understand that.</p> <p>19 My question is: Why does your role at</p> <p>20 Stanford present a conflict for you consulting with or</p> <p>21 providing advice to private companies, including</p> <p>22 startups?</p> <p>23 A. Because most of my work in that space is</p> <p>24 focused on public interest technology.</p> <p>25 Q. What does "public interest technology" mean?</p> <p style="text-align: right;">Page 63</p>	<p>1 A. Yes. Sorry. I put an extra L in there.</p> <p>2 Q. It might have been the two of them?</p> <p>3 A. It probably was the two of them --</p> <p>4 Q. And in that --</p> <p>5 A. -- one of the two.</p> <p>6 Q. And in that initial call, did they convey to</p> <p>7 you the assignment they were interested in having you</p> <p>8 pursue?</p> <p>9 A. So, I mean, we spoke at different points in</p> <p>10 time as often happens. You know, there's usually an</p> <p>11 introductory call that brings up kind of the bare facts</p> <p>12 of the case, and then there's often a follow-up call.</p> <p>13 I don't know -- I can't recall what happened</p> <p>14 when.</p> <p>15 Q. Do you recall who ultimately gave you the</p> <p>16 assignment?</p> <p>17 A. I believe both of them.</p> <p>18 Q. And the assignment is as set forth in -- on</p> <p>19 page 3 of your expert report?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And did you then develop your own</p> <p>22 methodology on how you would assess answering the</p> <p>23 questions that they presented as your assignment?</p> <p>24 A. So I have conducted multiple heuristic</p> <p>25 evaluations over my career, and I follow a specific</p> <p style="text-align: right;">Page 65</p>

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<p>1 The NPS survey is that -- "How likely is it 2 you would recommend Match.com to a friend?" 3 Q. Yes. 4 A. All right. We're on the same page, literally, 5 now. 6 Q. Did you ever attempt to assess how long it 7 takes a consumer to answer that question on the 0 to 10 8 scale? 9 A. No, I did not. 10 Q. What percentage of the consumers on this flow 11 actually answered the open-ended question presented in 12 the survey, which is: "In your own words, how can you 13 make finding love easier?" 14 A. I was not given data on that point. 15 Q. But did you attempt to figure that out? 16 A. No, I did not. 17 Q. Did you attempt to figure out how long on 18 average consumers spent answering that open-ended 19 question? 20 A. How long consumers spent -- 21 Q. Answering that open-ended question. 22 A. Oh. No, I did not. 23 Q. So the FTC in their guidance on cancellation 24 flows has a couple of things that they say. 25 One is, it should be no more -- it should be</p> <p style="text-align: right;">Page 90</p>	<p>1 negative option marketing? 2 A. I haven't looked at it in the last few months, 3 so I don't remember that specifically. I'd need to 4 look at the document. 5 Q. So you don't recall whether one of the tests 6 the FTC has for assessing surveys or save offers in the 7 context of cancellation flows, whether it unreasonably 8 delays the process of canceling? 9 A. It doesn't -- that's not surprising to me, but 10 I am just saying I haven't looked at that document in 11 some time. So -- 12 Q. And because you didn't measure the time it 13 takes an average consumer or consumers, generally, to 14 accomplish the surveys or to consider and either accept 15 or reject the save offer, you have no opinion about 16 whether those aspects of Match.com's cancellation flow 17 unreasonably delay the process of cancellation. 18 Correct? 19 MR. AIJAZ: Objection. Foundation. And form. 20 THE WITNESS: No. I think I disagree with the 21 way you phrased that. 22 BY MR. HUMMEL: 23 Q. Okay. How so? 24 A. I apologize. Can you please repeat the 25 question?</p> <p style="text-align: right;">Page 92</p>
<p>1 no more difficult than it was to sign up generally. 2 Right? 3 We talked about that before. 4 MR. AIJAZ: Objection. Foundation. Misstates 5 the guidance and calls for legal analysis. 6 BY MR. HUMMEL: 7 Q. That's one of -- I'm just referring -- point 8 of reference. Right? 9 And the other thing they said -- do you 10 recall, generally, that topic -- 11 A. Yes, proportionality. 12 Q. Yeah, yeah. Okay. Fine. That's a good way 13 to refer to it. 14 And you did nothing to assess proportionality. 15 We already talked about that. Correct? 16 A. Yes. We talked about that. 17 Q. And the other thing it says is, it's okay to 18 present a save offer or to have surveys so long as they 19 don't take an unreasonable -- so long as they don't 20 unreasonably delay the cancellation process. 21 Do you recall that language? 22 MR. AIJAZ: Objection. Foundation. 23 THE WITNESS: I'm sorry, from where again? 24 BY MR. HUMMEL: 25 Q. From the FTC guidance that you referenced on</p> <p style="text-align: right;">Page 91</p>	<p>1 (Record read as follows: 2 "QUESTION: And because you didn't measure the 3 time it takes an average consumer or 4 consumers, generally, to accomplish the 5 surveys or to consider and either accept or 6 reject the save offer, you have no opinion 7 about whether those aspects of Match.com's 8 cancellation flow unreasonably delay the 9 process of cancellation. Correct?") 10 THE WITNESS: Okay. No. I disagree with that 11 statement. 12 I mean, I certainly have opinions about 13 whether or not I believe it obstructed or caused, you 14 know, some additional work for the consumer. 15 You know, precisely the timing, no. That, I 16 do not have data on. 17 BY MR. HUMMEL: 18 Q. Do you know what percentage of consumers did 19 not complete the cancellation process because they 20 accepted a save offer? 21 A. I feel like I have seen that statistic in 22 either Langenfeld or Ward's rebuttal reports, but we'd 23 have to look at it precisely because I'm not sure. 24 But, again, I also don't -- I can't say with 25 confidence that I know exactly how those things are</p> <p style="text-align: right;">Page 93</p>

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<p>1 being measured.</p> <p>2 So, of course, I would have questions about</p> <p>3 the statistic itself, but I have seen a number included</p> <p>4 in those reports.</p> <p>5 Q. What prevented you from performing your own</p> <p>6 usability study on any of the Match.com flows that you</p> <p>7 analyzed?</p> <p>8 MR. AIJAZ: Objection. Foundation.</p> <p>9 THE WITNESS: Nothing prevented me from doing</p> <p>10 it. I generally don't find it to be necessary if there</p> <p>11 is supporting information that would -- that would add</p> <p>12 context to my heuristic evaluation.</p> <p>13 BY MR. HUMMEL:</p> <p>14 Q. What evidence do you have that stores the</p> <p>15 proposition or the assumption on your part that</p> <p>16 consumers who reach the password page intend to cancel</p> <p>17 their subscription?</p> <p>18 A. Well, I think I need to look at the</p> <p>19 screenshots in order to --</p> <p>20 Do we have different screenshots beyond what's</p> <p>21 in my report, or are we just going to refer to these</p> <p>22 today?</p> <p>23 Q. I have them. I have the screenshots for the</p> <p>24 three flows you analyzed --</p> <p>25 A. I mean, do we have -- because these are a</p> <p style="text-align: right;">Page 94</p>	<p>1 And I believe, also, some of the consumer --</p> <p>2 I'm sorry, not the consumer -- I believe some of the</p> <p>3 company emails, documents, I reviewed, attest to the</p> <p>4 fact that people hit that password page and found it to</p> <p>5 be a stumbling block.</p> <p>6 Q. What percentage of individuals who reached the</p> <p>7 password page did not ultimately cancel because they</p> <p>8 couldn't get past that password page?</p> <p>9 A. That, I don't have data on.</p> <p>10 Q. Okay. Was there anything you could have done</p> <p>11 to investigate that question?</p> <p>12 A. Well, again, if -- if we had had, I guess,</p> <p>13 data on those points that tracked precisely to the</p> <p>14 pages over the time period in which I was analyzing at</p> <p>15 the time I was writing this, that could have</p> <p>16 potentially added some context.</p> <p>17 Q. Is it your opinion that by having a password</p> <p>18 page requirement, the cancellation flow is not simple?</p> <p>19 MR. AIJAZ: Objection. Form.</p> <p>20 THE WITNESS: No. I would restate that</p> <p>21 myself.</p> <p>22 I mean, it is one of multiple factors that, I</p> <p>23 think, make the flow less simple, but it is not, like,</p> <p>24 a single, determinative feedback or on its -- alone</p> <p>25 that makes the flow less simple or easy.</p> <p style="text-align: right;">Page 96</p>
<p>1 little bit hard to read, and they're not in color.</p> <p>2 MR. HUMMEL: Let's mark all of them.</p> <p>3 Let's go off the record.</p> <p>4 (Discussion off the record.)</p> <p>5 (Deposition Exhibits 5, 6, and 7 were marked</p> <p>6 for identification.)</p> <p>7 MR. HUMMEL: All right. We took a break to</p> <p>8 mark some exhibits which are the pages of the flows</p> <p>9 that Dr. King elected to put in her report.</p> <p>10 Q. The question remains the same, which is: What</p> <p>11 evidence do you have that supports the proposition that</p> <p>12 consumers who reach the password page intend to cancel</p> <p>13 their subscription?</p> <p>14 A. So I believe that there was some -- there has</p> <p>15 been data provided on this point, but I didn't have it</p> <p>16 when I was writing the report.</p> <p>17 But I don't know if -- I don't know the status</p> <p>18 of where that is in this larger discussion.</p> <p>19 Q. So the answer is you don't know?</p> <p>20 A. I didn't have that data specifically at the</p> <p>21 time I wrote the report, but I have since -- although I</p> <p>22 can't -- again, I don't know precisely -- I haven't</p> <p>23 seen the spreadsheet, I don't know where the data has</p> <p>24 been crunched, but it's been relayed to me that there</p> <p>25 was some significant dropoff at that stage.</p> <p style="text-align: right;">Page 95</p>	<p>1 BY MR. HUMMEL:</p> <p>2 Q. Now, in your report, you describe the</p> <p>3 heuristic analysis in which you engaged. Right?</p> <p>4 A. Yes.</p> <p>5 Q. And you also described the -- what you believe</p> <p>6 to have been dark patterns in the cancellation flow.</p> <p>7 Correct?</p> <p>8 A. Yes.</p> <p>9 Q. Now, Nielsen has ten heuristics to utilize in</p> <p>10 connection with evaluating user experience. Correct?</p> <p>11 A. Ten. Yes, ten.</p> <p>12 Q. And in your report, you describe violation of</p> <p>13 only three heuristics; that is, starting on page 35:</p> <p>14 "Visibility of System Status, Consistency and</p> <p>15 Standards, Aesthetic and Minimalist Design." Correct?</p> <p>16 A. Yes. Those were the three I had the greatest</p> <p>17 concerns with.</p> <p>18 Q. You didn't opine or offer any opinions about</p> <p>19 the other seven heuristics in your report. Correct?</p> <p>20 A. Right. I did not.</p> <p>21 Q. And you did not comment on the -- let</p> <p>22 me -- Nielsen's usability components, the five</p> <p>23 usability components that he's published about.</p> <p>24 Correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 97</p>

<p>1 Q. So you didn't evaluate Heuristic Number 2, 2 which is the "Match between the system and the real 3 world." Correct?</p> <p>4 A. Correct.</p> <p>5 Q. And you didn't evaluate Heuristic Number 3, 6 which is "User control and freedom." Correct?</p> <p>7 A. Well, actually, it's not that I didn't 8 evaluate them. I didn't find them relevant. Let's 9 make that clear.</p> <p>10 It's not like I skipped them. I looked at all 11 ten, and I applied the ones I thought that the -- the 12 cancellation flow potentially violated.</p> <p>13 Q. Right. So you didn't think it violated 14 Heuristic 2, which is "Match between the system and the 15 real world," because you didn't put that in your 16 report. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you didn't think it violated Heuristic 3, 19 which is "User control and freedom." Correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you didn't opine that the Match 22 cancellation flow violated Heuristic 5, which is "Error 23 prevention." Correct?</p> <p>24 A. Correct.</p> <p>25 Q. And you didn't opine that the Match</p> <p style="text-align: right;">Page 98</p>	<p>1 Q. And you understand that the opinions that 2 you're going to be allowed to testify about at trial 3 are those that are contained in your report. Correct?</p> <p>4 A. Correct.</p> <p>5 MR. AIJAZ: Objection. Calls for a legal 6 conclusion and analysis and foundation.</p> <p>7 BY MR. HUMMEL:</p> <p>8 Q. That's your understanding. Right?</p> <p>9 A. That's -- yes.</p> <p>10 Q. Why was it that you didn't consider any of 11 Nielsen's usability components -- strike that.</p> <p>12 Why is it that you didn't opine about any of 13 Nielsen's usability components in your expert report?</p> <p>14 A. Those are components that, generally, are not 15 something I use in my work.</p> <p>16 Q. Why?</p> <p>17 A. They -- I just haven't seen them as relevant.</p> <p>18 Q. So learnability, efficiency, memorability, 19 errors, and satisfaction are not relevant?</p> <p>20 A. They are -- for the purposes of -- of my 21 analysis, no. I wasn't concerned with reviewing those 22 components.</p> <p>23 Let's go back and talk about your expertise.</p> <p>24 A. Sure.</p> <p>25 Q. You hold yourself out as an information</p> <p style="text-align: right;">Page 100</p>
<p>1 cancellation flow violated Heuristic 6, which is 2 "Recognition rather than recall." Correct?</p> <p>3 A. Right.</p> <p>4 Q. And you didn't opine that the Match 5 cancellation flow violated Heuristic 7, which is 6 "Flexibility and efficiency of use." Correct?</p> <p>7 A. Correct.</p> <p>8 Q. And you didn't opine that the Match 9 cancellation flow violated Heuristic Number 9, which is 10 "Help users recognize, diagnose, and recover from 11 errors." Correct?</p> <p>12 A. Correct.</p> <p>13 Q. And you didn't opine about -- you didn't opine 14 that Match's cancellation flow violated Heuristic 15 Number 10, "Help and documentation."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Is that true?</p> <p>19 A. I did not include that.</p> <p>20 Retrospectively, I might have included it the 21 more I considered questions around those help pages, 22 but -- but the --</p> <p>23 Q. Right. But it's not in your report. Correct?</p> <p>24 That's all I'm saying.</p> <p>25 A. Right. It's not in my report.</p> <p style="text-align: right;">Page 99</p>	<p>1 privacy expert. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. This case doesn't involve information privacy. 4 Right?</p> <p>5 A. That's true.</p> <p>6 Q. Are you an expert in cognitive psychology?</p> <p>7 A. I am an expert in some aspects of cognitive 8 psychology as they relate to HCI; but, no, I am not a 9 cognitive psychologist.</p> <p>10 Q. Are you familiar with Shari Diamond's treatise 11 on appropriate consumer surveys?</p> <p>12 A. No, I'm not.</p> <p>13 Q. So I take it you didn't use any of her 14 criteria for assessing whether Mr. Ward's usability 15 study satisfied the criteria that Shari Diamond set 16 forth for such consumer empirical study.</p> <p>17 MR. AIJAZ: Objection. Foundation.</p> <p>18 THE WITNESS: I don't believe I've ever 19 covered her work in my survey research background.</p> <p>20 BY MR. HUMMEL:</p> <p>21 Q. What is survey bias?</p> <p>22 A. I think that could have potentially several 23 answers.</p> <p>24 Can you be more specific? I'm not sure where 25 you're -- what you mean precisely.</p> <p style="text-align: right;">Page 101</p>

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<p>1 --o0o--</p> <p>2 I declare under penalty of perjury that the</p> <p>3 foregoing is true and correct. Subscribed at</p> <p>4 _____, California, this ____ day of</p> <p>5 _____ 2023.</p> <p>6</p> <p>7 _____</p> <p>8 JENNIFER KING, PH.D.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 234</p>	<p>1 M. Hasan Aijaz</p> <p>2 maijaz@ftc.gov</p> <p>3 August 10, 2023</p> <p>4 RE: Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>5 7/27/2023, Dr. Jennifer King (#6028094)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 errata-tx@veritext.com.</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 236</p>
<p>1 CERTIFICATE OF REPORTER</p> <p>2 I, HOLLY THUMAN, a Certified Shorthand</p> <p>3 Reporter, hereby certify that the witness in the</p> <p>4 foregoing deposition was by me duly sworn to tell the</p> <p>5 truth, the whole truth, and nothing but the truth in</p> <p>6 the within-entitled cause; that said deposition was</p> <p>7 taken down in shorthand by me, a disinterested person,</p> <p>8 at the time and place therein stated; and that the</p> <p>9 testimony of the said witness was thereafter reduced to</p> <p>10 typewriting, by computer, under my direction and</p> <p>11 supervision;</p> <p>12 That before completion of the deposition,</p> <p>13 review of the transcript [X] was [] was not</p> <p>14 requested/offered. If requested, any changes made by</p> <p>15 the deponent (and provided to the reporter) during the</p> <p>16 period allowed are appended hereto.</p> <p>17 I further certify that I am not of counsel or</p> <p>18 attorney for either or any of the parties to the said</p> <p>19 deposition, nor in any way interested in the event of</p> <p>20 this cause, and that I am not related to any of the</p> <p>21 parties thereto.</p> <p>22</p> <p>23 </p> <p>24 HOLLY THUMAN, CSR No. 6834</p> <p>25</p> <p style="text-align: right;">Page 235</p>	<p>1 Federal Trade Commission v. Match Group, Inc., Et Al.</p> <p>2 Dr. Jennifer King (#6028094)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Dr. Jennifer King Date _____</p> <p>25</p> <p style="text-align: right;">Page 237</p>